Southern Moldings, Inc. *and* **International Union, United Aerospace and Agricultural Implement Workers of America, UAW.** Cases 9-CA-12984, 9-CA-13168, and 9-RC-12608

April 10, 1981

DECISION AND ORDER

On April 14, 1980, Administrative Law Judge Earldean V. S. Robbins issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the Charging Party and the General Counsel filed cross-exceptions and supporting briefs, and Respondent, the Charging Party, and the General Counsel filed answering briefs.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] recommendations,[2] and conclusions[3] of the Administrative Law Judge and to adopt her recommended Order, as modified herein.[4]

1. The Administrative Law Judge found that as of August 25, 1978, the Union had obtained valid authorization cards from a clear majority of the 163 employees in the bargaining unit and therefore, as of that date, represented a majority of the unit employees. The record shows that all of the cards submitted by the General Counsel in support of the Union's claim of majority status contain clear and unambiguous language indicating that the signers authorized the Union to represent them for collective-bargaining purposes. Respondent did not contest the validity of 71 of these cards. However, Respondent challenged the validity of 34 cards on the basis that they were obtained through misrepresentation.[5] In finding 30 of these cards valid,[6] the Administrative Law Judge, based primarily on credibility grounds, rejected Respondent's contention that the card solicitors told the signers that the cards were "just" or "only" to secure an election. We agree with her conclusions as to the 25 cards signed by employees Kays, E. Cardwell, Gibson, Tillet, Watson, Thomas, M. Smith, E. Cox, Curtsinger, Daily, R. Tabor, Weber, Sloan, Norton, Dean, Harp, Henley, Hunt, B. Tabor, Johnson, Troxell, W. Cardwell, McKinney, Thompson, and Parrish.

With respect to the remaining cards, the Administrative Law Judge found valid the cards signed by King, Conrad, and Lefler, but did not specifically discuss the circumstances surrounding the solicitation of these cards. We agree that these cards are valid designations of the Union for the following reasons.

King testified that employee May gave him a card in Respondent's parking lot, told him it was to get a union in, and stated it would be used to get an election. When King told May he did not want to sign and did not believe in the Union, May said that by the time of the election "somebody else that wouldn't sign a card would change their mind and vote for it." King took the card home, thought it over, and brought it back the next day. He then told May he would sign a card but would not vote for the Union. In contrast to this testimony, in a

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.* 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

In sec. III,B,1 of her Decision, the Administrative Law Judge states that Personnel Manager Stansbury testified that Foreman Gardner, rather than Plant Superintendent Moccia, instructed him to note in the warning log the conversations between Moccia and employees Conrad, Noe, J. Cox, E. Cox, and May. In sec. III,B,3, she states that employees Noe, Richardson, and Howard testified that, following the September 12, 1978, encounter between Stansbury and Union Representative Kettler, the former had a pad and pencil in his hands and appeared to be writing something, whereas only Noe and Howard so testified. In sec. III,C,3, she finds Respondent did not violate Sec. 8(a)(1) of the Act by promising employees economic benefits "if they chose the Union," whereas it is clear from the context that she intended to say "if they did not choose the Union." These inadvertent errors are insufficient to affect our decision.

[2] In the absence of exceptions thereto, we adopt, *pro forma*, the Administrative Law Judge's recommendations that the Union's Objections 2 and 12 be overruled.

[3] The Administrative Law Judge found, and we agree, that Respondent violated Sec. 8(a)(1) of the Act on October 11, 1978, by interfering with the distribution of union literature in a nonwork area on nonworktime and threatening employees with discharge if they continued such activity. In so doing, the Administrative Law Judge stated that employees Noe, Cook, and Weber all testified that while they were distributing union literature outside the employees' entrance Respondent's watchman, Poe, in the presence of Stansbury, told them to leave the property. She therefore discredited Poe's testimony that he only asked the employees to step outside a nearby gate which was a considerable distance from the edge of Respondent's property. The record shows that Noe and Cook in fact testified in agreement with Poe on this point. However, even assuming Poe did not tell the employees to leave the property, we nonetheless find his actions violated the Act. In this regard, it is clear that Poe directed the employees to cease distributing union literature in a nonwork area on nonworktime and that there is no credited evidence that the distribution at the employees entrance interfered with the entry and exit of employees.

[4] In adopting the Administrative Law Judge's conclusion that preelection speeches to the employees made by Respondent's president, Sullivan, were unlawful, we disavow her reliance on statements in Sullivan's speeches that profit sharing could be lost as a result of negotiations. We further disavow, as not being clearly established by the record, her additional finding that Sullivan told the employees they would lose profit sharing if the Union won the election. Further, although the Administrative Law Judge found Respondent engaged in unlawful surveillance in violation of Sec. 8(a)(1) of the Act, she inadvertently failed to include this finding in her Conclusions of Law or to provide a remedy therefor in her recommended Order. We shall amend her Conclusions of Law and recommended Order accordingly.

[5] Respondent also challenged two additional cards on the basis of authentication. We agree with the Administrative Law Judge's finding that employee Green's card was properly authenticated and that it is unnecessary to pass on the authenticity of employee Jackson's card.

[6] The Administrative Law Judge found, and we agree, that it is unnecessary to pass on the validity of the remaining 4 of the 34 cards.

prehearing statement obtained from him by Respondent, King stated that an unidentified solicitor told him the card would only be used to get an election. Similarly, Conrad testified that he received a card from May, who told him it was "to help get the union in." He returned the card to someone else. However, in his prehearing statement he stated he was told that "the only way to get a union election was to sign the card." According to the testimony of employee Joe Cox, at his request King and Conrad signed and returned the cards to him in the parking lot. Cox further testified that he did not tell King the only reason for the card was to get an election, and did not tell Conrad the purpose of the card at all.

We agree with the Administrative Law Judge's finding that all the prehearing statements obtained by Respondent, including those of King and Conrad, are unreliable. Furthermore, we note that the Administrative Law Judge specifically credited the testimony of the Union's solicitors concerning the circumstances surrounding the solicitation of the cards, and, as indicated above, Cox stated that neither King nor Conrad was told that the cards would be used "only" or "just" for an election. Finally, the signers' own testimony shows that no statement was made to them which canceled the clear, unambiguous meaning of the card as a designation of the Union. Accordingly, we conclude that the cards of Conrad and King are valid.[7]

Lefler testified that he received an authorization card in the mail and that he thought he had returned it by mail. He further testified that he was neither approached by, nor had any conversation with, anyone asking him to sign a card. According to the credited testimony of Joe Cox, he gave Lefler a card in the employee parking lot at Lefler's request, but did not tell Lefler what the purpose was; Lefler looked at the card, signed it, and returned it to Cox. Since under either Lefler's or Cox's version there is no showing that any misrepresentation as to the purpose of the card was made, we find Lefler's card valid.

Our findings with respect to the above cards establish that as of August 25, 1978, the Union had obtained valid authorization cards from 100 of the 163 employees in the bargaining unit. Accordingly, we conclude that as of August 25, 1978, the Union represented a clear majority of the employees in the bargaining unit.[8]

2. We agree with the Administrative Law Judge, for the reasons set forth in her Decision, that the unfair labor practices committed by the Respondent warrant issuance of a bargaining order. In addition to the unfair labor practices relied on by the Administrative Law Judge, we also rely on her finding, with which we agree, that shortly before the hearing Respondent violated Section 8(a)(1) of the Act by conducting prehearing interrogations which exceeded the permissible bounds of pretrial preparation and which were conducted without observing all of the safeguards established by the Board for such interrogations.[9] The fact that Respondent's unlawful conduct extended beyong the election to the eve of the unfair labor practice hearing reveals, in our view, a continuing hostility toward the Union and further reduces the possibility of erasing the effects of Respondent's unfair labor practices and of ensuring a fair rerun election by the use of traditional Board remedies. Accordingly we shall issue a bargaining order as recommended by the Administrative Law Judge.[10]

AMENDED CONCLUSIONS OF LAW

Substitute the following for the Administrative Law Judge's Conclusions of Law 5 and 6:

"5. By refusing to recognize and bargain with the Union since August 25, 1978, as the exclusive collective-bargaining representative of all the employees in the appropriate unit described above while contemporaneously engaging in conduct which undermined the Union's majority status and prevented the holding of a fair election, Respondent has violated Section 8(a)(5) and (1) of the Act.

"6. Respondent has interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act by announcing to employees a rule prohibiting solicitation and distribution on company property and reprimanding and threatening to reprimand them for violations thereof; by promulgating no-solicitation, no-distribution rules in order to discourage employees from engaging in

[7] There was conflicting testimony as to which of several employees solicited card signers King, Conrad, Tillett, Gibson, and Dean. We find it unnecessary to resolve these conflicts as it is clear that under the credited testimony of all the solicitors the purpose of the cards was not misrepresented.

[8] We therefore find it unnecessary to pass on the Administrative Law Judge's conclusion that the authorization cards signed by Hukill and Brown were valid.

[9] The Administrative Law Judge found that employee Johnson credibly testified that Respondent did not give him assurances against reprisals prior to the commencement of its prehearing interview with him. Contrary to her finding, Johnson's testimony demonstrates that he did receive adequate assurances. However, the Administrative Law Judge also found, and we agree, that the scope of the questioning exceeded the permissible bounds of pretrial preparation. Accordingly, we find that Respondent violated Sec. 8(a)(1) of the Act with respect to Johnson.

[10] The Administrative Law Judge failed to make a finding as to when Respondent's bargaining obligation began. Respondent embarked on its course of unlawful conduct on August 16, 1978, the day after the first union meeting, when it interrogated employee Cook in violation of Sec. 8(a)(1) of the Act. The Union demanded recognition on August 25. Accordingly, we find that Respondent's bargaining obligation arose as of August 25, 1978. *Cas Walkers Cash Stores Inc.*, 249 NLRB 316 (1980); *Drug Package Company, Inc.*, 228 NLRB 108 (1977); *Trading Port, Inc.*, 219 NLRB 298 (1975). We shall amend the Administrative Law Judge's Conclusions of Law and recommended Order accordingly.

union activities; by promulgating and enforcing a no-distribution rule which prohibits employees from distributing literature in nonwork areas during nonworktime; by engaging in surveillance of employees distributing and receiving union literature; by threatening employees with disciplinary action for wearing union buttons and distributing and/or receiving union literature; by coercively interrogating employees as to their union sympathies and activities; by withholding, and tellng employees it was withholding, a scheduled annual wage increase because the Union filed a representation petition; by announcing to employees the futility of selecting the Union as their collective-bargaining representative and conveying to them the impression that union representation inevitably brings uncompetitiveness, strikes, loss of jobs, lower wage increases, other dire consequences, and eventually plant closure; and by threatening employees with plant closure and loss of benefits if they selected the Union as their collective-bargaining representative."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Southern Moldings, Inc., Frankfort, Kentucky, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(d):

"(d) Threatening employees with plant closure and loss of benefits it they select the Union as their collective-bargaining representative."

2. Insert the following as new paragraph 1(e) and reletter the subsequent paragraphs accordingly:

"(e) Engaging in surveillance of employees distributing and receiving union literature."

3. Substitute the following for paragraph 2(a):

"(a) Upon request, recognize and bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive bargaining representative since August 25, 1978, of the employees in the unit described below with respect to wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed contract. The appropriate unit is:

> All production and maintenance employees, including shipping and receiving employees, janitors, inspectors, tool room employees, first aid attendant, employed by Southern Moldings, Inc., at its plant in Frankfort, Kentucky; but excluding all office clerical employees and all guards, professional employees and supervisors, as defined in the Act."

4. Substitute the attached notice for that of the Administrative Law Judge.

IT IS FURTHER ORDERED that the election held on October 27, 1978, in Case 9-RC-12608, be, and it hereby is, set aside and that the petition therein be, and it hereby is, dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

> To engage in self-organization
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
>
> To refrain from the exercise of any or all such activities.

WE WILL NOT do any thing that interferes with these rights. More specifically,

WE WILL NOT refuse to recognize and bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive representative of our employees in the unit set forth below.

WE WILL NOT coercively interrogate our employees regarding their union activities and sympathies and the union activities and sympathies of fellow employees.

WE WILL NOT withhold, or tell our employees that we will withhold, scheduled annual wage increases because the Union filed a representation petition.

WE WILL NOT threaten employees with plant closure and loss of benefits if they select the Union as their collective-bargaining representative.

WE WILL NOT engage in surveillance of employees distributing and receiving union literature.

WE WILL NOT announce to employees the futility of selecting the Union as their collective-bargaining representative and convey to them the impression that union representation inevitably brings uncompetitiveness, strikes, loss of jobs, lower wage increases, plant closure, and other dire consequences.

WE WILL NOT announce to employees a rule prohibiting solicitation and distribution on company property and reprimand and threaten to reprimand them for violations therefore.

WE WILL NOT threaten employees with disciplinary action if they wear union buttons or distribute, and/or receive, union literature.

WE WILL NOT promulgate no-solicitation, no-distribution rules in order to discourage employees from engaging in union activities.

WE WILL NOT promulgate and enforce a no-distribution rule which prohibits employees from distributing in nonwork areas during nonworktime.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, recognize and bargain collectively with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive representative since August 25, 1978, of the employees in the following appropriate unit and, upon request, embody in a signed agreement any understanding reached. The appropriate bargaining unit is:

> All production and maintenance employees, including shipping and receiving employees, janitors, inspectors, tool room employees, first aid attendant, employed at our plant in Frankfort, Kentucky; but excluding all office clerical employees and all guards, professional employees and supervisors, as defined in the Act.

WE WILL expunge from our records all memoranda of, or reference to, the verbal warning given Quenton Conrad, Bert Noe, Joe Cox, Edna Cox, and Charles May for violation of our invalid no-solicitation, no-distribution rules.

SOUTHERN MOLDINGS, INC.

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge: This case was heard before me on various dates in June and July 1979. The original charge in Case 9-CA-12984 was filed by International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, UAW, herein called the Union, on September 18, 1978, and served on Southern Moldings, Inc., herein called Respondent, on September 19, 1978. An amended charge in Case 9-CA-12984 was filed by the Union and served on Respondent on October 10, 1978. A complaint issued in Case 9-CA-12984 on November 3, 1978, alleging that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended, herein called the Act. The charge in Case 9-CA-13168 was filed by the Union and served on Respondent on November 9, 1978. An order consolidating Cases 9-CA-12984 and 9-CA-13168 and a consolidated amended complaint issued on December 12, 1978, alleging that Respondent violated Section 8(a)(1), (3), and (5) of the Act.

The petition in Case 9-RC-12608 was filed by the Union on August 28, 1978. Pursuant to a Stipulation for Certification Upon Consent Election approved n September 25, 1978, an election by secret ballot was conducted on October 27, 1978, among certain employees of Respondent which resulted in 76 ballots cast for and 91 cast against the Union with 2 nondeterminative challenged ballots. On November 3, 1978, the Union filed timely objections to conduct affecting the results of the election, a copy of which was duly served on Respondent. On December 13, 1978, the Regional Director issued an order directing hearing, order consolidating cases and notice of hearing in which he determined that the objections raised substantial and material issues affecting the results of the election which could best be resolved by the conduct of a hearing and consolidated Case 9-RC-12608 with Cases 9-CA-12984 and 9-CA-13168.

The principal issues herein are:

1. Whether Respondent promulgated and enforced an unlawful no-solicitation, no-distribution rule.
2. Whether Respondent withheld an annual wage increase in order to discourage its employees' sympathy for membership in, or activity on behalf of, the Union.
3. Whether Respondent threatened employees with loss of economic benefit and plant closure if they chose the Union as their collective-bargaining representative.
4. Whether Respondent promised employees economic benefits if they refrained from selecting the Union as their collective-bargaining representative.
5. Whether Respondent announced to employees the futility of selecting the Union as their collective-bargaining representative.
6. Whether Respondent unlawfully enforced its no-distribution rule.
7. Whether Respondent coercively interrogated employees.
8. Whether Respondent engaged in surveillance of its employees' activities in distributing union literature.

9. Whether Respondent suspended employee Nellie Boggs because of her union activities.

10. Whether the above conduct is sufficient to warrant a finding that Respondent has refused to recognize and bargain with the Union as the collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act.

11. Whether Respondent interfered with employees' right of free access to the National Labor Relations Board and attempted to obstruct the Board processes, coercively interrogated employees, and engaged in other unlawful prehearing conduct.

Upon the entire record, including my observation of the witnesses and after due consideration of the briefs filed by the parties, I make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Kentucky corporation with an office and principal place of business in Frankfort, Kentucky, is engaged in the manufacture of automobile window frames. Respondent, in the course and conduct of its business operations during the 12-month period preceding the issuance of the complaint herein, sold and shipped goods and materials valued in excess of $50,000 from its Frankfort, Kentucky, facility directly to points outside the State of Kentucky.

The complaint alleges, Respondent admits, and I find that at all times material herein Respondent is, and has been, an employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Organizational Activities*

Employee Joseph Cox secured authorization cards from the Union on August 11, 1978.[1] He signed a card himself and on August 12 and 13 solicited signatures on a few additional cards. On August 14, at Respondent's facility, Cox and several fellow employees solicited signatures on a number of union authorization cards. On August 15, Union Representative August Kettler held the first organizational meeting for day-shift employees. On August 22, Kettler held another meeting for day-shift employees and on that same date held the first organizational meeting for second-shift employees. On August 28, the Union sent a letter to Respondent requesting recognition and bargaining. On August 28, the Union filed the representation petition herein and sent a letter to Rodman Sullivan, Respondent's president, regarding wage increases. On August 30, employees engaged in the first distribution on Respondent's premises.

B. *The Promulgation and Enforcement of the No-Solicitation, No-Distribution Rule*

1. The August reprimand of individual employees

On August 30, at or about 4:20 p.m., the plant's superintendent and part owner, Domick Moccia, spoke with employee Quentin Conrad and on August 31 spoke with employees Bert Noe, Joe Cox, and Edna Cox regarding solicitation. Noe testified that his foreman, George Gardner, came to his work station and told him that Moccia wanted to see him. Gardner then escorted Noe to the production control office located in the production area. According to Noe, Moccia told him that there would be no soliciting of any kind on company property and that if caught he would be reprimanded. Moccia asked if Noe understood. Noe said he did.

Edna Cox testified that Gardner told her to report to Moccia, which she did. Both Gardner and Moccia were present. Moccia said, "Edna, we can't have any literature passed in the plant or on the property." Cox said, "I'm not doing that." Moccia said, "I'm not accusing you of it." She denies that he mentioned "working time."

Joe Cox testified that, when he was called into the office, Moccia and Gardner were there. According to Cox, Moccia said, "We don't allow any soliciting on Company property at any time." Cox said, "I am not doing that, I don't know what you are talking about." Cox then asked if Moccia were accusing him. Moccia said no, he was not accusing Cox. Moccia then said that anyone caught soliciting on company property would be reprimanded. Cox then asked if that were a threat. Moccia said no that it was not a threat and he did not want Cox to take it that way. Cox said he felt it was a threat. Moccia then dismissed Cox and Cox returned to work. Moccia did not mention excessive use of the restroom.

On September 1, Foreman Walter Rucker escorted employee Charles May to the production control office. Moccia was there. According to May, Moccia told him not to hand out literature on company property or company time. May said okay and left.

Moccia testified that he read a statement to each of these employees without variation. According to him the statement he read was:

> I want to inform you that solicitation of any kind during working time will not be tolerated and that if you are observed doing so you will be reprimanded.

Some of the employees asked questions. One asked who said they were soliciting. Another said they were only doing it on their lunchtime. Moccia replied that he did not care what he did on lunchtime, he did not want him soliciting during working time. One of the employees asked what Moccia meant by soliciting. Moccia said soliciting meant anything from talking to fellow workers to selling neckties. Thereafter, he told Personnel Manager Stansbury that he had spoken to these five employees

[1] Unless otherwise indicated, all dates hereinafter in August through December will be in 1978 and all dates in May through July will be in 1979.

and gave him a copy of the statement he allegedly read. Moccia testified that he thinks he may have instructed Stansbury to put it in the record. He then testified that he may have told Stansbury to put in the employees' personnel files. According to Moccia, he did not tell the employees that these conversations were verbal warnings. He denies that he threatened any of them with discipline or reprimand for engaging in solicitation or distribution of union literature on nonworktime. Gardner and Rucker did not testifiy as to these conversations.

Stansbury testified that Moccia told him, "I had a talk with four or five individuals, how about making a note in your warning log." Stansbury said, "Well, what do you have." Moccia said, "I've got a thing I wrote out and read to them." Stansbury said, "Well, I'll note it in here but I'd like a copy of that so I can put in in their file." Stansbury then made the following notation in the warning log for all five employees:

Passing out material/solicitation verbal warning.

Stansbury further testified that Moccia told him the subject of the conversations but he does not recall what Moccia said. Later Moccia gave him a copy of the statement he said he had read to the employees and Stansbury instructed his secretary to ascertain to whom it was read and the date and then to place it in their personnel files.

Moccia denies that he had any knowledge of the existence of a warning log. He admits that he makes suggestions to Stansbury that a particular employee receive warnings or written letters or suspensions or discharges when he feels the employee has violated plant rules. According to Moccia the usual discipline progression is a verbal warning, written warning, suspension, and then discharge. Some serious violations, such as theft, result in discharge for the first offense. Written warnings are issued by the personnel department.

Moccia testified that he spoke to the five employees at the request of Foremen Carlos Sams, George Gardner, and Walter Rucker. According to him, Sams was the first to approach him. Sams said Conrad was leaving his job and talking to people and he wanted Moccia to speak to Conrad regarding this. Sams did not mention the Union or the subject of Conrad's conversations. Moccia further testified that Gardner and Rucker may have approached him together or separately. They said basically the same thing, that they had employees leaving their jobs during worktime walking up and down the lines, conversing with other employees. Neither union nor leafletting nor selling was mentioned. They did not tell him the nature of the conversations.

Gardner testified that, around the first week of August when he was doing employee evaluations, he talked to Joe Cox, Edna Cox, Bert Noe, Lynn Watson, and perhaps Christine Harp. He told them that they were spending too much time away from their work station, that they were remaining in the restroom too long, and that they should spend more time working rather than talking. According to Gardner, employees are permitted to go to the restroom at times other than breaks. However, these employees were spending excessive time in the restroom, more than they normally did. This was why he talked to them. Also they walked down the aisle, stopping and talking for a few minutes to fellow employees. He does not know the subject of these conversations. According to Gardner, the words "union literature and solicitation" were not mentioned in Gardner's discussion with the employees.

Gardner further testified that Watson ceased this activity. Consequently, when he mentioned the problem to Moccia, he only asked him to speak to Joe Cox, Edna Cox, and Bert Noe. He also testified that this is a recurring problem but that usually the offender changes his conduct after one or two counselings so that he has never initiated a written warning in this regard.

Gardner admits that at or about the time of the conversations he had seen union buttons, cards, and other materials in the bathroom and that he reported this to Moccia. He does not recall whether he informed Moccia as to these materials at the same time that he asked Moccia to talk to these employees regarding excessive use of the restroom and talking to fellow employees. According to Gardner, union stickers on the walls, stalls, and floors of the bathroom were posing a cleaning problem. He does not recall what Moccia said, but Moccia did not give him any instructions. He never received instructions from either Moccia or Stansbury regarding what to do about union solicitation among the employees.

Moccia testified that he had a previous conversation with May regarding talking during working time. According to him about a year prior to August 30, May's foreman complained that May was conversing with other employees when he should have been working. At the foreman's request, Moccia was called into the office. At this time, Moccia told May that he expected May to stay on the job and work.

Moccia also testified that he had spoken to other employees regarding the same type of conduct. However, the only specific employee named by him was Gerald Winn. According to Moccia, at or around the same time of his 1977 conversation with May he told Winn he expected him to stay on the job, to stop walking off, and to stop spending too much time in the restroom during working time. Respondent's log has no entry for a warning given to any employee regarding excessive use of the bathroom or talking to fellow employees while away from one's work station. The first entry in the log is dated March 9, 1977. The last entry is dated July 16, 1979.

I credit the employee witnesses that Moccia said there was to be no solicitation or distribution of any kind on company property or company time. They impressed me as honest reliable witnesses and their testimony tends to be mutually corroborative. Noe testified that Moccia said, "[N]o solicitation of any kind on Company property." Edna Cox testified that he told her, "[W]e can't have any literature passed in the plant or on the property." Joe Cox testified that Moccia told him, "We don't allow any soliciting on company property at any time." May testified that Moccia told him not to hand out literature on company property or company time." On the

other hand, even though a foreman was present during each of these conversations, the foreman did not testify in this regard. Further, Moccia's testimony as to these incidents is incredible in several respects. Thus, accordinq to Moccia, the foreman did not mention that the alleged misconduct of these employees involved conversations relating to the Union and he did not even suspect the nature of the conversations, yet, Gardner testified that, even though he could not recall if he specifically mentioned union activities during his report to Moccia of the alleged misconduct, at or about the same time, he had reported to Moccia regarding union literature in the restrooms. Also if Moccia's version is to be believed, he had no cause to mention soliciting for, according to him, no foreman had told him the employees were soliciting or were suspected of soliciting. Also Moccia denies any knowledge of a warning log, yet Stansbury testified that Gardner instructed him to note the conversations in the warning log. Considering these inconsistencies, I do not credit Moccia.

2. The promulgation of written no-solicitation, no-distribution rule

On September 5, Respondent posted the following no-solicitation, no-distribution rule signed by Sullivan:

NOTICE

THE FOLLOWING POLICY IS IN EFFECT IMMEDIATELY:

SOLICITATIONS

Employees shall not engage in any solicitation of any kind on the premises of the Company during any time they are expected to be working. Furthermore, employees shall not distribute any kind of notices, circulars, or written materials at any time without prior written permission from the Personnel Department, and there shall be no littering on the premises of the Company. Furthermore, the posting of notices, signs or written materials of any kind on the Company's premises is prohibited unless authorized in writing by the Personnel Department.

BULLETIN BOARDS

The bulletin boards positioned throughout the plant are used to communicate Company business and information in the best interests of the employees. All authorized information will be initialed by the management of the Company. It is the responsibility of each employee to be aware of the information presented. Unauthorized postings to the bulletin boards or modifications of material contained thereon will result in disciplinary action. Persons wishing to put material on the bulletin boards should have it ok'd by the Personnel Manager or General Manager.

On October 18, a new rule was posted which reads:

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BULLETIN BOARDS

The bulletin boards positioned throughout the plant are used to communicate Company business and information in the best interest of the employees. All authorized information will be initialed by the management of the Company. It is the responsibility of each employee to be aware of the information presented. Unauthorized postings to the bulletin boards or modifications of material contained thereon will result in disciplinary action. Persons wishing to put material on the bulletin boards should have it ok'd by the Personnel Manager or General Manager.

Although a number of employees engaged in union solicitation and distribution and wore union buttons after September 1 and after the posting of the no-solicitation, no-distribution rules, no other discipline in the nature of a verbal warning noted in the warning log or greater discipline has been given to employees admittedly because of union solicitation or distribution, or wearing union buttons. However, there have been some incidents regarding distribution of union literature and the 8(a)(3) allegation as to the suspension of Nellie Boggs does involve the wearing of union buttons.

Employees Joe Cox, Shirley Meadow, Noe, and Julia Cook testified that Respondent permits and/or condones a number of solicitations in the plant, including an annual Kentucky Derby pool, Avon and Tupperware orders, posting of "for sale" notices on mirrors, United Fund solicitations, blood bank solicitations, and soliciting money for employees for birthdays and when there is a death in the family. Joe Cox testified without contradiction that the United Fund and blood bank solicitations occur during working time. Gardner admits that the United Fund solicitations are permitted by Respondent during working time.

Noe testified that an employee solicits participation in the Derby pool during working time. Joe Cox and Noe testified that they have seen Gardner participate in the Derby pool. Cook testified that she has seen Gardner, Rucker, and Foreman Larry Pittman participate in the Derby pool. Employee Shirley Meadow, who works on the second shift, testified that Sams has solicited her participation in the pool. Meadows testified that an employee who is a salesperson for Avon distributes catalogs and takes orders in the lunchroom. Meadows also testified that this salesperson has given her a catalog during

working time. Further, Meadows testified that the solicitation of birthday and bereavement funds occurs during worktime and that she has solicited such funds from Sams, her foreman, during working time. Cook also testified that Tupperware products ordered are delivered to the plant and that the employees make no effort to conceal these goods, but rather leave them sitting on a table.

Gardner testified that he does not tolerate any kind of solicitation or nonwork activity during working time on his shift in his department. He admits that a Kentucky Derby pool is conducted on his shift and that he has participated during working time but denies that any employees on his shift do so. He admits he has seen Avon and/or Tupperware solicitation during breaks in the lunchroom but denies ever seeing it during working time. He also admits there are solicitations of funds for employees for various reasons during breaks, but denies any such solicitation on working time. No other foreman gave any testimony to refute that of employee witnesses.

3. The September interference with the distribution of union literature (Stansbury)

Employee Frank Richardson testified that on September 12, at or about 3:20 p.m., 10 minutes before the end of his shift, he was making a normal end of shift report to his foreman, George Gardner, on the day's production when Moccia came up and said to Gardner, "the damn union man is out there, come on back to my office." Gardner and Moccia then left. Kettler testified that he and Union Representative John Chapman arrived at the plant at or about 3:15 p.m. A few minutes later, prior to the employees leaving the building, three or four people wearing white coats[2] appeared outside the entrance. Several minutes thereafter, the employees on the day shift began leaving the plant. A number of these employees, including Joe Cox, Edna Cox, and Bert Noe commenced distributing union handbills to their fellow employees.

According to Joe Cox, he and Noe were the first employees to leave the building. Moccia, Stansbury, Foremen William Taylor, John Cochran, George Gardner, and Walter Rucker[3] were standing outside the building in the vicinity of the employees' entrance. Noe and Cox went to the public road where Kettler was stationed and obtained a number of handbills and Noe proceeded back upon Respondent's property and commenced distributing handbills to fellow employees. Whereupon, Stansbury approached Noe and, according to Noe, told him to take the handbills out to the public road and not litter company property. Noe said, "Paul, you are violating my rights." Stansbury said, "Well, take that stuff on out to the road." Noe returned to the road. Employee Jerry Howard testified in substantial agreement with Noe.

Kettler testified that he asked Noe what was wrong. When Noe told him that Stansbury had said the handbills distribution would have to be off Respondent's property, Kettler asked Stansbury, "[A]re you saying to these people that they don't have the right to put out literature on company property." Stansbury said, "Well, we don't want no littering on Company property." Kettler replied, "Well, Mr. Stansbury, apparently you don't know what the law is, and I guess I am going to have to file some charges," or words to that effect, "to inform you of what the people's rights are under the law."

Noe testified in substantial agreement with Kettler. Cox testified in substantial agreement with both Noe and Kettler as to their respective conversations with Stansbury. Cox further testified that he observed some of the supervisors catch some of the exiting employees by the hand in what he interpreted as an attempt to stop employees from going out to the road to obtain handbills.

Noe, Richardson, and Howard testified in substantial agreement that, following the Kettler-Stansbury encounter, Stansbury had a pad and pencil in his hands and appeared to be writing something. Noe testified that, as Stansbury was writing, Gardner was calling out names including Edna Cox, Joe Cox, Jesse Polk, and Noe, all of whom were distributing handbills. Howard testified that, he did not hear what the supervisors said to Stansbury. Richardson testified that Stansbury sat at a picnic table near the employees' entrance door and spoke to some of the employees who were reporting for work on the second shift. Some of the employees gave Stansbury a copy of the handbill they had just received; however, Richardson could not hear whether Stansbury requested this literature. According to Richardson the foremen had entered the building by this time and were watching the employees from the window. Cox and Richardson further testified that, prior to this incident, they had never seen supervisors standing outside as the employees left the plant.

Stansbury testified that on September 12, at or around 3 p.m., he had occasion to say hello to the watchman on duty. The watchman told him that union literature would be distributed in the parking lot that day. Stansbury then went into the office and asked Sullivan if he had heard anything. Sullivan said, "[T]here's supposed to be something going on outside today." Stansbury asked if there were anything Sullivan wanted him to do. Sullivan replied, "[J]ust make sure nobody's blocking traffic and the place doesn't get littered up. Other than that, don't do anything."

Toward the end of the shift, accordinq to Stansbury, he went to the area near the employees' entrance. He saw Noe return to Respondent's property from the road with a armful of paper and move into an area immediately south of the entrance to the parking lot. According to Stansbury, "it couldn't have been more than eight or nine feet from that entrance, right smack dab in the middle."[4] As he distributed the papers to employees, some of the papers fell on the ground. So, Stansbury testified, he decided that this was a "blocking" situation which he should stop. When asked how one man could block a 30-feet entrance, Stansbury said cars were enter-

[2] Foremen wear white coats.

[3] All admitted supervisors.

[4] The entrance is 30-feet wide and cars and pedestrians both enter and exit there. The drive from the public road leads directly into the shipping area. The plant is to the right of the shipping area. The parking lot is to the left. Thus, when entering the parking lot, a vehicle must angle left from the drive leading to shipping. The record does not establish precisely how this affects the width of the accessway to the parking lot entrance

ing and exiting and the area around Noe was becoming congested with other employees due to Noe's activities.

According to Stansbury, he said to Noe, "Bert, I can't let you block the driveway like this. Besides, papers are on the ground and you are littering." He then motioned to the area where the access to the employee parking lot comes into contact with the public road and told Noe to move down to that area. Noe said, "[Y]ou mean I can't pass out this union literature." Stansbury said, "[Y]ou're free to distribute whatever you want but, please, I can't let you block the driveway like this. Besides, I don't want these papers blowing all over the place. If you want to hand it out move down to here." Noe proceeded to move, stating, "[Y]ou know, you're trying to stop my rights to pass this out." Stansbury said, "No Bert."

As to the Kettler conversation, Stansbury testified that Kettler said, "What's the problem." Stansbury said, "There's no problem. I didn't want Bert to block the entrance up there and he was dropping papers and littering and so I asked him to confine his activities to this area." Kettler said, "[D]o you mean these people can't pass out union literature? The people are free to pass out whatever they want to pass out. Do you know that you are keeping them from their rights to distribute union literature?" Stansbury said, "They can pass out whatever they wish to pass out." Kettler said, "What is your name?" As Stansbury walked away, Kettler said, "I'll see you in court, Mr. Personnel Manager."

According to Stansbury, he then returned to the area near the employee entrance, allegedly to observe the parking lot entrance to ensure that no one else moved into that area to block traffic. He remained there until "the parking lot was sufficiently emptied and he felt there were no safety problems there." He then returned inside the building. He denies writing anything or having any writing materials in his possession or that any other supervisor was writing anything. He further denies that he called out the names of employees or that he requested any other supervisor to write down names of employees. He also denies that he alerted any of the foremen as to the expected handbilling.

Rucker testified that he was going to the locker room to change and go home when he noticed employees standing at the door looking out. Since the employees usually leave immediately at the end of the shift, he walked to the door to see what was happening. He does not recall if he saw any foremen there other than Gardner. As he was standing there talking to the employees, employee Lucy Craycraft asked him, "[C]an we go out and get the literature that they're passing out?" Rucker replied, "sure, you can go out there."

Rucker testified that he had no writing materials nor were any visible in the hands of Stansbury and Gardner. He denied that he called out the names of any employees or that either Stansbury or Gardner did so during the approximately 10 minutes that he was there. He is sure that he and Gardner walked back into the plant together; however, Stansbury remained outside. Rucker also testified that, when he was at the doorway, Stansbury was standing at the end of the sidewalk and appeared to be talking to Kettler. He could not hear Stansbury's remarks but he did hear Kettler yelling at Stansbury. Rucker denies holding, blocking, or restraining any employees or trying in any way to prevent them from obtaining the handbills.

Gardner also denies that he attempted to prevent any employees from distributing or receiving union literature or that he and/or Stansbury had any writing materials in their hands or called out names of employees. He further denied that he wrote anyone's name; however, he was not questioned as to whether Stansbury wrote any names. According to him, either Moccia or Stansbury told him there was a commotion outside and to go out and make sure there was no problem, but not to say anything. He denies that he was given any specific instructions as to what to do if there were a problem. He does not recall whether he was told that they had literature. The word union was not mentioned. He was just told that "they" had "stuff" in their hands. No mention was made of Kettler or any nonemployee.

Gardner also testified that, as he was walking out, the bell announcing the end of the shift rang and employees were clocking out. He walked out the employee entrance part way down the sidewalk and stood there a few minutes. He did not say anything. A number of people were standing around. Stansbury was in front of him. According to Gardner, there was "quite a commotion." People were milling around at the entrance to the parking lot and people could not get into, or out of, the parking lot. Cars were trying to leave and to enter the parking lot.

Gardner further testified that he heard part of the conversation between Stansbury and Noe. He heard Stansbury tell Noe that he was blocking the entrance to the parking lot, that there were cars and people trying to get in and out, and that he would like for Noe to move farther on out to the edge of the property where it would not block the entrance to the parking lot and where he would not litter the property. The only portion of the Kettler-Stansbury conversation that he heard was Kettler's remark, "I will see you in court, Mr. Personnel Manager."

4. The October 23 interference with the distribution of union literature (Moccia)

Employee Julia Cook testified that, at the end of the day shift on October 23, most of the day-shift employees were handbilling when she and employee Nellie Boggs saw some night-shift employees entering Respondent's premises. Cook and Boggs walked up to the employees' entrance and started distributing union leaflets to night-shift employees as they entered the plant. According to Cook, Moccia approached them and said, "[Y]ou people are going to have to stop littering on this property." Cook looked around and saw nothing on the ground. She then said, "Mr. Moccia, we are not littering." Moccia said, "Well, I think its littering." He then asked, "[A]re you going to leave or not." Cook said no and Moccia went into the plant. Cook further testified that she has never seen any handbiller throwing literature on the ground nor has she seen any employee receiving literature do so. Boggs testified that Moccia shook his finger at them and told them not to distribute "that trash" on the property. Cook said she knew her rights

and she would continue to distribute. Moccia said, all right and entered the plant.

Moccia testified that he observed a couple of employees drop the leaflets. Since he did not want the property littered, he asked Cook to stop passing out the leaflets. Cook said she knew her rights and she either said she was not going to stop or she was not going to leave. Moccia admits he may have asked Cook to stop distributing on company property. I therefore credit Cook and Boggs that he did so. He also testified that the reason he told her to stop distributing was that he believed the employees accepting the leaflet would litter. However, he did not ask any of these employees not to litter, Cook was not disciplined.

5. The October 11 interference with the distribution of union literature (Poe and Stansbury)

On October 11, day-shift employees distributed union literature immediately after the end of their shift. Since some night-shift employees had already entered the parking lot, Cook, Noe, and employee Neville Samuel Weber stood at the employees' entrance to distribute the literature. After a very short time, Raymond Poe, whose status as a guard or other agent of Respondent is in dispute, approached them. Weber testified that Poe said, "[Y]ou guys handing out union literature will have to go out past the gate off Company property." One or more of the three employees said they did not have to leave, that they had a right under Federal law. Poe said, "The boss told me you have to." Noe asked who the boss was. Poe said, "Mr. Sullivan." One of the three employees said, "[W]e are not going to leave." Poe said, "I guess you know this could cost you your jobs." Poe then went back into the building.

Cook also testified that Poe began the conversation by saying, "I just got a phone call and you're going to have to take this union business outside the gates." Cook asked who called you. Poe said, "the boss." Cook asked, "which boss" and Poe said, "The big boss, Rod Sullivan. You're going to have to take this business outside the gates." Noe said, "Mr. Poe, you're violating our rights. We have the right to give this literature out." Poe said, "Well, it could mean your jobs." Noe testified in substantial agreement with Weber and Cook.

Poe testified that Noe walked up fairly close to the left front door and started handing out literature. He asked Noe not to obstruct the exiting employees, to distribute the literature outside the gate that the day-shift employees wanted to leave because the night-shift employees would be entering. Noe said, "No, I'm not leaving this spot. I know my rights." When questioned again as to what he said, Poe testified that he asked Noe to step outside of the gate, that it would speed up the exit of the day-shift employees. When Noe said he knew his rights, Poe said, "Young man you could be jeopardizing your job." Noe replied, "I know my rights."

Later when specifically questioned, Poe denied mentioning Sullivan's name and gave another version of Noe's reply to Poe's statement that Noe could be jeopardizing his job. According to the second version when Poe said Noe could be jeopardizing his job because of the bosses, Noe threw up his hands and said, "Mr. Sullivan is a damn liar. I'm handing these pamphlets out." When specifically asked whether he said anything about the "bosses," Poe testified that he told Noe that the bosses did not want anything distracting the movement of the employees when they were coming on duty and going off.

Poe denies that Sullivan instructed him to request that Noe move away from the door. He further denies that Sullivan or anyone else in supervision ever talked to him about the problem of employees handbilling in the parking lot. When asked why he told Noe he could be jeopardizing his job, Poe testified, "I'm employed at a nonunion plant and I'm against unions . . . I thought he was interfering with the people that were trying to get home." Poe's explanation of the "interference" was that, in addition to handing out the leaflets, Noe was stopping and talking to some of the employees, some were taking the leaflets, and some of the employees had to walk around them.

Noe and Cook testified that, during this conversation, Stansbury was standing inside the door watching. Cook estimated that he was maybe 8 feet from Poe but closer to the three employees. Noe estimated that Stansbury was only 3 or 4 feet from him and Poe. They both testified that Stansbury made no comment when Poe told them to leave nor when Poe said they could be jeopardizing their jobs. They also testified that Cook turned to Stansbury and asked if he would like to have a leaflet. Stansbury said no, he had some in the office. Weber was not questioned as to whether Stansbury was there. Cook also testified that Sams was standing near the timeclock, a position much farther from Poe than Stansbury's.

Poe testified that several employees were present when he spoke to Noe but that he does not remember if Stansbury were there and he does not recall seeing Stansbury at any time that afternoon. Stansbury denies that he heard the conversation. He testified that he was about 70 or 80 feet away when he saw Poe standing outside by Noe. Poe then entered the building.

According to Stansbury, since Poe usually is not outside with employees, he decided to walk down and say hello to Poe with the idea that, if anything out of the ordinary was bothering Poe, Poe would mention it to him. Stansbury spoke to Poe. Poe returned the greeting. According to Stansbury, he was by Poe's desk which placed him 2 or 3 feet from the door. Noe and Cook were leaning against the building "with their shoulders right up on either side of the door." Noe looked up and then Cook looked over her shoulder and saw Stansbury. Cook said to him, "Here do you want one of these." Stansbury looked at the leaflet and saw UAW written on it. He said, "No thank you" and left.

Poe denies having a conversation with Stansbury shortly following his conversation with Noe, or that he ever had a conversation with Stansbury regarding this incident. Sams testified that he saw Noe distributing union literature at the employee entrance on October 11. According to Sams, he had gone to the guard's desk to tell Poe that he had arranged for someone to bring him his keys which he had forgotten and he wanted Poe to

page him when the keys arrived so that he could come to the guard's desk to get them.

Respondent admits that Poe is a watchman but denies that he is a guard. Poe is stationed near the employee entrance. The guard's desk is 4 or 5 feet from the entrance door. The doors are double, between 3 and 4 feet wide with safety glass windows in the upper half. The timeclock is located in this area. Poe works from 3 to 11 p.m. for 4 days during the regular workweek and on Saturdays. There is normally no production on Saturday. Poe does not wear a uniform and he does not carry a weapon.

Stansbury testified that Poe is one of four watchmen. He is stationed near the employee entrance because this location gives him a clear view of the access road to the shipping department. He maintains a log where he notes the movement of trucks entering and exiting from the shipping department. When the office personnel leaves, he answers the telephone and take messages when the office closes. Poe is given the employee absentee log which he maintains for the remainder of his shift. Stansbury admits that Poe and the other employees, whom he considers as watchmen, are sometimes referred to as guards by both employees and management. He also admits that, at a Board preelection conference or hearing on or about September 20, the parties agreed to exclude these four individuals from the unit but contends that he does not know whether they were excluded as guards.

Poe testified that his duties are to sign vehicles in and out. When there is no production, he makes rounds with a timeclock which he punches at 13 keys located at various points throughout the plant. When the plant is in production, Poe testified, "I stay at the guard desk as a security guard and make sure that there's nothing that I think is illegal brought into the plant." He explained that he was referring to something such as liquor or weapons. According to Poe, this has never happened but Guard Foreman Jim Weber instructed him that in the event an employee tries to bring weapons or liquor into the plant after break, he is to try to hold the employee there and notify the night foreman.

Poe further testified that sometimes he assists the plant nurse if necessary and, in the evenings, he helps with some janitorial work and functions as a fire guard. It is also part of his duties to stop off-duty employees and nonemployees who are attempting to enter the plant so as to ascertain their business. If it is during office hours and the business is with someone located in the office, he directs the person to the office. If the person claims some business in the production area or wishes to see someone in the production area, Poe asks the person to wait and contacts the appropriate plant supervisor.

Poe also testified that Weber told him that he was to report violations of company rules. For example, if he saw that an employee was intoxicated, he was to report it to the supervisor. Weber did not give any other specific examples, he simply told Poe to use his judgment about what to report. Poe further testified that his duties include informing employees when management wishes to have a meeting of employees. Another duty is to monitor the parking lot to ensure that no one is engaging in fighting or horseplay or loitering after work hours. He has never been confronted with loitering by an off-duty employee. He testified that, if he ever were, he would ask the employees to leave. He has had occasion to go to the parking lot to check the business of persons who drive into the parking lot after dark. Usually, it is someone—either employee or a relative of an employee—who is waiting for an on-duty employee to take a supper break.

Employee Shirley Meadows testified that, at a meeting of her shift in 1978, Sullivan instructed them that when calling in to report an absence or when leaving the plant prior to the end of the shift they were to talk to the guard who would make a notation in a ledger book. She further testified that, in the fall of 1978, she obtained permission from her foreman to leave early. When she walked up to the timeclock to clock out, Poe asked if he could help her. When she told him she was leaving the plant, he called the foreman to see if it were all right for her to leave. He then wrote her name and the time of her departure in a ledger book.

6. Sams' threat of disciplinary action for the possession of union literature and the wearing of union buttons

Employee Brenda Tabor testified that, sometime in October, she, Sams, Bramer, and employee Caroline Parrish were talking when the subject of union literature and buttons arose. She does not recall who introduced this subject. There had been some distribution of union literature that day. During the course of the conversation, Sams said he did not want to see any of his employees reading union literature that employees were not allowed to read union literature on company property. He further said he did not want to catch any of his employees wearing union buttons. One of the employees said they were allowed to wear union buttons on company property and to read union literature on company property if it were on their own time. Sams replied, "Well, I'd better not catch none of my employees wearing buttons or with union literature."

Bramer testified in substantial agreement with Tabor. Tabor and Bramer further testified that thereafter they did not wear union buttons in the plant; however, they also testified that thereafter some employees on their shift continued to wear union buttons in the plant. Tabor testified that some employees continued to distribute union literature on company property.

Sams testified that in early September he did have a conversation with Parrish, Tabor, and Bramer. He and Bramer were working on a machine and had not finished by breaktime so they just pulled a stool over to the machine and Parrish and Tabor came over. Tabor said she wanted to ask Sams a question about soliciting. Sams said he would answer it the best he could and asked, "what about soliciting." Tabor said she wanted to know if they would get into trouble passing out, or reading union literature on company property. Sams said that the only thing he could tell her was what the rules were, that before and after work and breaks was their time but during worktime it was prohibited. Nothing was said about union buttons. Sams specifically denies that he said

he had better not catch employees reading or distributing union literature or wearing union buttons on company property or that he threatened employees with disciplinary action if they did so.

Thereafter, Kettler sent Sams a letter dated October 23, the body of which reads:

> It has come to my attention by a number of employees on the second shift that you have been telling them, "That you had better not catch any of them distributing literature on your shift during non-work time or that you had better not catch them wearing any kind of union buttons and etc. or you will get rid of them." Mr. Sams if these statements are true and I assure you we are investigating them, you can rest assured that we will be processing unfair labor practices against you with the National Labor Relations Board. I'm sure you are aware there are already charges filed against Southern Molding for interfering with the workers rights to organize. The employees on your shift have the right to wear buttons, pins, shirts or any other union advertising on their person without fear of interference from you or any other member of management. And we intend to see that those rights are preserved. I sincerely hope you will discontinue interfering with the workers rights, if this in fact is taking place.

At or about the same time copies of the letter were distributed to employees by the Union accompanied by the following statement:

> 2nd Shift Workers
>
> This letter was sent to Mr. Sams to-day. If Mr. Sams does not adhere to this correspondence, please contact me at the Holiday Inn in Frankfort. We will take your statements so we can press charges. . . . Wear your pins, buttons, shirts and etc. if you wish to do so. The Law gives you this right.

Sams first denied that it had ever come to his attention prior to the election that an accusation had been made that he told employees he had better not catch any of them distributing union literature or wearing union buttons. Upon being confronted with the above letter, he first denied receiving the letter but admitted that he had seen it. Later he admitted that he received a letter in the mail which could have been the October 23 letter. According to him, Tabor brought him a copy of the union leaflet containing a copy of the letter. At which time, Sams testified, Tabor said the letter was a lie and asked to see Sullivan. She then went to the office. When she returned, she told Sams that she had told Sullivan it was a lie and that Sams had not said any such thing to anyone.

Sams also testified that he discussed the letter with Stansbury and Sullivan. Sullivan asked if it were true. Sams said no. Sams admits that he never told any employees that the accusation in the letter was false. Sams was Respondent's last witness. Sullivan was not questioned, in this regard, even though he was present during Sams' testimony and had testified immediately prior to Sams. Tabor testified several weeks prior thereto before the continuance in this matter. She was not called as a rebuttal witness.

I credit Bramer and Tabor. They impressed me as honest, forthright witnesses, they are still in Respondent's employ and their testimony is mutually corroborative. On the other hand, Sams impressed me as an evasive witness and his testimony lacks corroboration.

7. Conclusions as to conduct relating to union solicitation and distribution

It is well established that a rule which prohibits union solicitation on nonworktime and distribution of union literature in nonwork areas on nonworktime is presumptively invalid. *Stoddard-Quirk Manufacturing Co.*, 138 NLRB 615 (1962). Respondent makes no contention that circumstances exist in its general operation, which would overcome this presumption and it is apparent from the record that such circumstances do not exist. Accordingly, I find that Moccia announced to Edna Cox, Joe Cox, Bert Noe, and Charles May an overly broad no-solicitation, no-distribution rule. I further find that the announcing of the rule to select union activists, the timing of the announcement immediately after the first union distribution of the Company, the fact that the announcement was made by Moccia, Respondent's third-in-command and part owner in individual interviews with these employees, and the fact that the incidents were noted in Respondent's warning log all demonstrate an intent thereby to interfere with the employees' rights under Section 7 of the Act. I therefore find that by telling Noe, Edna Cox, Joe Cox, and May that solicitation and distribution of any kind are prohibited on Company property and time, Respondent has violated Section 8(a)(1) of the Act. *Montgomery Ward & Co.*, 227 NLRB 1170 (1977).

Respondent concedes that the rule which it posted on September 5 is overly broad in that it prohibits distribution at any time without prior management permission, but contends that it was never enforced as written and since many employees ignored if it did not interfere with the employees' Section 7 rights. Furthermore, the argument continues, any arguable coercive effect of the rule was removed when it was replaced on October 18 by a valid rule and since the valid rule has remained posted to date, no remedy is required.

I find no merit in this argument. The mere existence of an invalid rule interferes with employees' rights under the Act. The fact that some employees continue to assert their rights notwithstanding the invalid rule does not negate its general coercive effect. Furthermore, on several occasions, Respondent attempted to preclude employees from distributing union literature in nonwork areas on nonworktime. At least, one of these occasions was after October 18. Also, Respondent took no positive steps to inform employees that the rule had heen changed beyond the simple posting of the newly worded rules, without any notice that it constituted a change in the rule. Considering that the old rule was posted throughout most of the preelection campaign, the new rule was posted only for the 9 days immediately preced-

ing the election, the attempted enforcement of the invalid rule after the posting of the valid rule, and the failure to specifically communicate to employees that the rule had been changed, I find that the posting of the October 18 rule did not effectively repudiate the unlawful rule. *FMC Corporation*, 211 NLRB 770 (1974).

I further find that, prior to and after the Union's organizational campaign, Respondent has permitted nonunion solicitation and distribution during worktime. In fact there is no evidence in the record to indicate that, prior to August 30, Respondent communicated to its employees any rule restricting solicitation and distribution. Thus, in all the circumstances, I conclude that the September 5 rule was promulgated with an intent to interfere with the employees Section 7 rights and that the rule was disparately enforced as to union distribution. Accordingly, I find that, by the promulgation and enforcement of the September 5 no-solicitation, no-distribution rule, Respondent has violated Section 8(a)(1) of the Act.

The complaint alleges three separate incidents of unlawful interference with the distribution of union literature, the September 12 Stansbury incident, the October 11 Poe incident, and the October 23 Moccia incident. In all three instances, it is undisputed that the employees involved were distributing union literature in nonwork areas during nonworktime. As to the September 12 incident I credit Noe that Stansbury told him to take the handbills out to the public road and not litter company property. In this regard, I note that Cox' testimony corroborates Noe's and that Noe immediately related Stansbury's instructions to Kettler and Kettler, Noe, and Howard testified that, upon confronting Stansbury, Stansbury told him the same thing. Further, Noe's version of what Stansbury said is consistent with the no-distribution rule Respondent had promulgated and posted only a week previously. The rule essentially prohibits distribution on company property. In these circumstances, I find it more credible that Stansbury told Noe to distribute off company property.

Further, even if I credit Stansbury's version, he told Noe to move and motioned vaguely to an area near the public road. In view of the posted rule and the fact that Noe immediately moved to the public road, it must have been apparent that Noe reasonably understood Stansbury to mean move off of company property. Yet, Stansbury made no attempt to clarify his instructions. In the circumstances, any ambiguity in the instructions must be resolved against Respondent and I would still find that Stansbury must have known that Noe assumed he was referring to the public road and that this was what Stansbury intended to convey.

Similarly, I find no merit in Respondent's argument that its actions on September 12 were taken solely for the protection of its employees and not to interfere with their Section 7 rights. Specifically, Respondent claims that Noe's distributing created an "unsafe and littering" condition. In my opinion, the record does not support this argument. Thus, Stansbury initially described the scene which allegedly motivated his actions. "He was . . . trying to give people what he had, and papers were falling on the ground . . . . This all happened really fast. He was moving fast. And . . . I thought, here's a blocking in the area, I'd better take care of the situation. So I proceeded to approach Bert Noe."

Both Stansbury and Noe testified that the area around Noe was congested. Yet, neither of them described with any specificity the alleged "congestion." Respondent has the burden of establishing substantial justification for its interference and simply stating that it was "unsafe" or "congested" is not sufficient. Kettler testified without contradiction that Noe was there only 1 or 2 minutes before Stansbury approached him. Considering the timing, it is unlikely that many, if any, cars were exiting at that time for Stansbury admitted that it was only a matter of seconds after the end-of-shift bell rang that Noe stationed himself near the parking lot entrance. Further Kettler testified, also without contradiction, that there was no backup of incoming cars.

The record clearly shows that although a few handbills may have fallen to the ground, such "littering" within the 2 or 3 minutes material here was not sufficient to warrant Respondent's interference. Thus, in the circumstances, I conclude that there was no substantial justification for interfering with Noe's activities. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.

Further, in the circumstances herein, including the unlawful promulgation and enforcement of no-distribution rule prohibiting distribution on Respondent's property without prior permission, the unprecedented nature of the observation, the fact that any traffic safety and littering problem could easily have been observed from management offices, and the fact that Stansbury appeared to be writing something on a pad,[5] I find that Respondent had no legitimate purpose in stationing its supervisors outside the employees' entrance, but rather that its purpose was to inhibit employees in the exercise of their right to distribute and receive union literature. Accordingly, I find that Respondent thereby engaged in unlawful surveillance in violation of Section 8(a)(1) of the Act.

Respondent argues as to the Moccia incident that Moccia's sole concern was with littering. However, Moccia's own testimony indicates that he had seen only one or two employee recipients drop leaflets. Clearly, there was no substantial littering problem. Furthermore, he made no attempt to contain any "littering." Rather he completely, and without substantial justification, ordered them to stop distributing on company property. It is immaterial that they chose not to obey. Accordingly, I find that, by Moccia's conduct in attempting to stop Boggs and Cook from distributing union literature on company property in nonwork areas on nonworktime, Respondent has violated Section 8(a)(1) of the Act.

As to the Poe incident on October 11, I credit Noe, Cook, and Weber as to what occurred. They are all still in Respondent's employ, their testimony is mutually corroborative, and they impressed me as honest, forthright witnesses. On the other hand, Poe's testimony is inconsistent, vague in some respects, and generally unconvincing. Further, Poe admits and Respondent does not dis-

[5] I credit Noe, Richardson, and Howard in this regard.

pute that it is one of his responsibilities to notice whether employees are abiding by Respondent's rules as they enter onto and exit from Respondent's property and to report deviations. Respondent's posted rule essentially prohibited distribution on company property. Therefore it appears more likely that he would tell them to leave Respondent's property, as testified to by Noe, Cook, and Weber rather than, as testified to by Poe, to step outside the gate.[6] This is particularly true since Poe contends that he was never given any specific instructions as to union distribution.

I do not credit Stansbury's testimony that he did not overhear Poe's conversation with Noe and Cook. Noe and Cook credibly testified that Stansbury was standing only 3 or 4 feet away from Poe during this conversation. In this regard I note that Stansbury and Poe do not corroborate each other and their testimony is conflicting in some respects. Thus, Stansbury states he saw Poe talking to Noe outside and deliberately walked down to say hello to Poe with the expectation that, if anything were wrong, Poe would tell him about it. By the time he reached Poe's desk, Poe had returned inside. However, they merely exchanged greetings. Yet, Poe denies that he had a conversation with Stansbury shortly following his conversation with Noe and Cook.

Stansbury testified that Poe always tells him if there is a problem. Yet, even Poe admits that somewhat heated remarks were exchanged and he told them they were jeopardizing their jobs. They defied his request, in the course of his duties, for them to move, a request which he had every reason to feel was legitimate within the context of his duties and Respondent's rules. I find it most unlikely that, in these circumstances, he did not mention the incident to Stansbury unless, as Noe and Cook contend, Stansbury was there, heard the conversation, and did nothing.

Therefore, I find that Poe, in the course of the performance of his job duties, and in the presence of Stansbury, told employees to stop distributing union literature in a nonwork area on nonworktime, that their refusal to comply could result in their discharge, and that Stansbury did nothing to disavow these statements. Accordingly, I find that Respondent thereby attempted to prohibit employees from distributing union literature in nonwork areas on nonworktime and threatened them with discharge if they continued such activity, all in violation of Section 8(a)(1) of the Act. In view of this finding, I find it unnecessary to determine Poe's alleged status as an agent of Respondent.

The complaint also alleqes that, during the course of this incident, Sams and Stansbury were engaged in unlawful surveillance. Sams' uncontradicted testimony is that he was only there for a few minutes and he had a legitimate purpose for being in the area. Similarly, it is uncontradicted that it is not unusual for Stansbury to be in that area. The General Counsel adduced no evidence other than the fact of their presence, as to an unlawful purpose. In these circumstances, I find that the General Counsel has failed to establish that, by their presence in the employees' entrance area of the plant during the time, employees were engaged in union distribution outside the building. Respondent engaged in unlawful surveillance as alleged in the complaint.

As to the Sams' incident, I find that he threatened employees with disciplinary action if he saw them distributing, receiving, or reading union literature or wearing union buttons. Such conduct is clearly violative of Section 8(a)(1) of the Act, and I so find.

C. *The Alleged Threats, Promises of Benefit, and Other Interference by Sullivan*

1. Background

During the course of its preelection campaign, Respondent made repeated reference to two predecessor employers. Respondent is the successor to H. K. Porter, who was the successor to an earlier Southern Moldings. All three companies manufactured parts for automotive companies, apparently as a sole source supplier. Respondent manufactures trim and functional parts for the automotive and appliance industries. Its principal product is a door window frame for which it is the sole supplier for Chrysler Corporation. Chrysler owns the tooling utilized in manufacturing these frames in accordance with the normal practice in the industry. The original Southern Moldings commenced operations in 1953. J. Rodman Sullivan, Respondent's president and general manager, was employed by the original Southern Moldings in 1957. The employees there were represented by the Allied Industrial Workers. According to Sullivan, during the course of a strike in 1957, Ford Motor Company removed its tooling from Southern Moldings.

In 1959 the original Southern Moldings was purchased by H. K. Porter. Sullivan was employed by H. K. Porter as a purchasing agent in 1959. He was also involved in personnel and industrial relations. H. K. Porter employees were represented by AIW and Sullivan, on behalf of the Employer, participated in the negotiations leading to several collective-bargaining agreements between AIW and H. K. Porter. Respondent commenced operations in 1974 with approximately 65 or 70 employees, approximately 55 to 60 of whom had worked for H. K. Porter. AIW continued to represent the employees until it was decertified shortly after Respondent commenced operations. During the Union's organizational campaign involved herein, about 10 of the approximately 178 employees in the bargaining unit had been employed at the original Southern Moldings and about 65 had been employed by H. K. Porter.

2. Sullivan's campaign speeches and letters

Sullivan made five preelection campaign speeches to the employees on each of the two shifts. Speeches were made to at least one shift on September 11 and 22 and October 2, 19, and 25. Speeches were made to the other shift on either these same dates or 1 day later or earlier. Sullivan contends that with the exception of the October 25 speech, he used a prepared text which he read verbatim or repeated from memory. However, employee witnesses testified that, although Sullivan referred to a

[6] Apparently the gate is fairly close to the building rather than at the boundary end of the driveway.

paper, he would look up and speak to the audience and did not appear to be reading verbatim from the paper. Sullivan testified that this was exactly the effect he was attempting to achieve. Cox testified that Sullivan appeared to be reading from a prepared text at only one of the meetings. However, questions were asked during that meeting and other meetings and Sullivan did not read the answers. Following some of the speeches Sullivan sent letters to employees covering the same subject matter as in the prepared text of the speeches.

The General Counsel contends that Sullivan, in his speeches, threatened employees with plant closure and loss of economic benefits if they chose the Union as their collective-bargaining representative, promised them economic benefits if they refrained from selecting the Union as their collective-bargaining representative, and announced to them the futility of selecting the Union as their collective-bargaining representative.

Some of the employee witnesses who testified on behalf of the General Counsel are unable to identify, with certainty, the particular meeting where specific statements were made. Most often, the difficulty was in distinguishing between the two September meetings and the first two October meetings.

a. *The September speeches*

Employees Joe Cox, Noe, Frank Richardson, Edna Cox, and Jerry Howard[7] testified as to the September meetings. Although there are some variations in their testimony, they testified in substantial agreement. Joe Cox, Edna Cox, and Noe testified that at the September 11 meeting,[8] Sullivan said the employees did not need a union, that he had been fair with them all along. Joe Cox and Richardson testified that he discussed benefits and, according to Richardson, Sullivan read something regarding benefits and something regarding employee rights, which he said was the law. Howard denies that Sullivan read anything purporting to state the law.

They all testified essentially that Sullivan said that, because of the Union's organizational campaign, he could not give them their annual wage increase which was about due, that it would be against the law, and that charges could be brought against him. Richardson, Howard, and Edna Cox testified that he made this statement in response to questions asked by an employee. Edna Cox testified that, at the September 11 meeting, a number of employees asked when they would receive a raise. According to her, Sullivan replied that he could not give them a raise until he saw "what the outcome of this Union was going to be." When the same question was asked at the September 22 meeting, he replied that if he granted a raise at that time he probably would be fined. Howard and Richardson testified in substantial agreement with Cox as to Sullivan's answer except, according to them, he said charges could be brought against him. It is unclear from Howard's and Richardson's testimony whether this occurred at the September 11 or the September 22 meeting. Joe Cox, Howard, and Noe testified that Sullivan said he would give them their annual wage increase the next day if anyone could get a letter from the National Labor Relations Board stating that it was all right for Respondent to give the increase.

Joe Cox further testified that, in the September 22 speech, Sullivan again spoke about benefits. He said there was a new job coming in and, if the Union did not come in, he saw no reason why the profit sharing would not be restored to its previous level[9] and they would be given their annual raise. Noe testified that Sullivan said, if the Union were defeated and talked of no more, the employees bonus would increase "successively." "Successively" is the word Noe recalls Sullivan using. Sullivan did not explain what he meant but Noe took it to mean that each year the bonus would be larger. However, Noe places this statement at the September 11 meeting.

Edna Cox testified that, at the September 11 meeting, Sullivan said that if the Union came in there would be no more profit sharing. She further testified that at the September 22 meeting Sullivan said that in negotiations employees might lose profit sharing. She specifically denies hearing him say that profit sharing might be lost in the "give and take" of negotiations. He did say something to the effect that if the Union came in Respondent would have to negotiate with the Union for a contract. However, she does not recall whether he mentioned "give and take" in negotiating a contract or that in negotiations you can gain benefits and lose benefits. Joe Cox testified that in the September 22 meeting Sullivan said something about labor negotiations being give and take and what the employees might lose if the Union got in. He does not recall whether Sullivan said you could gain benefits and lose benefits during the give and take of negotiations.

Joe Cox testified that Sullivan said they had dealings with a union before at H. K. Porter, that they had voted this other union out, and that he could see no reason why a union was needed now. Sullivan also said that, if the Union was voted in, its demands might be so great that Respondent would not be able to meet them and might have to shut down. Sullivan further said that the old employees all knew that H. K. Porter sold out and moved away because of the union and Respondent did not have the luxury of being able to move as H. K. Porter did. Cox does not recall Sullivan discussing collective bargaining or competition with other companies. He denies that Sullivan said the Union's demands might be so high that Respondent might he unable to meet such demands because it would make Respondent noncompetitive. Something was said about the possibility of a strike but he does not recall what. He does not recall Sullivan talking about an H. K. Porter strike nor about Thompson Industries.

Noe testified that Sullivan said that neither Respondent nor the Union could bribe or threaten employees, that they had the right to organize. Although the testimony differs as to whether it occurred during the Sep-

[7] All employees on the day shift.

[8] Joe Cox and Edna Cox place the date as September 11, Noe does not recall which meeting it was. Where employees could not recall the exact date of a meeting, the date was determined, where possible, from a consideration of all evidence.

[9] About a month earlier, Respondent announced a decrease in the profit-sharing bonus.

tember 11 or the September 22 meeting, Joe Cox, Noe, and Richardson testified in substantial agreement that Noe suggested that, if Sullivan were so concerned about employees knowing their rights, why did Noe not post the information he received from the Labor Board on the bulletin board so they could see what their rights were.

Sullivan testified, without contradiction, that the September 11 meeting lasted about 10 minutes. According to him, he read a prepared speech verbatim and read an excerpt from a National Labor Relations Board pamphlet. After he finished the speech he asked for questions. Noe asked why he had not posted the notice to employees which accompanied the representation petition. Sullivan replied that on advice of counsel he thought it was not necessary and that Respondent was not obligated to post the notice and therefore would not do so.

Sullivan also testified that he read the September 22 speech verbatim with neither paraphrasing nor elaboration. He described his delivery as follows:

> Q. Now, what did you do?
>
> A. In an effort to develop a closeness between myself and the people, I spent a lot of time working with this speech, committing the speech to memory. I underlined words in every line, and as I went along on the speech I constantly referred to the speech and read it, but I was able to present it in such a way that it was not a sing-song speech.
>
> Q. What do you mean by "sing-song"?
>
> A. Well, it wasn't obvious that I was reading it.

He further testified that, after he presented the speech, he opened the meeting to questions. Noe again asked why the notice had not been posted. Sullivan said it would be posted as soon as the meeting ended.[10] Employee Lanny Moore said he had called the National Labor Relations Board and was told by them that it was legal to grant a raise at that time. Sullivan said that, if Moore would get him a letter from the Board on Board stationery stating that it would be legal to grant a raise, Moore would get a raise immediately. Sullivan does not recall if any other employees asked questions. The meeting lasted 15 or 20 minutes.

The text of the September 11 speech which Sullivan testified that he read, states, *inter alia*:

> The National Labor Relations Board has established some legal ground rules to cover union election campaigns. I think some of these rules are important to you to know.
>
> 1. *Threats*
>
> No one—not the Company not the Union—can attempt to gain your vote by threats or intimidation, and if you are threatened or harassed by anyone, I urge you to report it to me immediately.
>
> 2. *Wages and Benefits Increases*
>
> A few of you have asked about wage increases this September. Well—we at Southern Moldings have been studying the possibility of granting wage increases to all of you this September. Unfortunately, we find ourselves in a terrible predicament because of this election business. According to Federal Labor Law, a company is not allowed to promise or give out wage increases or new benefits during an election campaign because it is regarded as giving a bribe to influence your vote. In fact, I have a printed leaflet put out by the National Labor Relations Board, an agency of the Federal Government, specifically covering the subject and which I would like to read to you (read the first two paragraphs and the item covering pay raises). If anyone wants to read this leaflet for themselves, I'll be glad to share it with you. Based on this Labor Law, it appears that our hands are now tied and wage increases cannot be given until this Union election is over. In any event, I want to assure you that increases will be given as soon as it is legal to do so.
>
> * * * * *
>
> So think about it. I sure don't believe you need a union at Southern Moldings in order to get a fair shake. Sure, I know we've made mistakes in the past, but we've made plenty of improvements too, and I think we can keep working together to build a better future for ourselves. So think about it.

The prepared text of the September 22 speech reads, *inter alia*:

> 1. *Wages*—Wages have been a sore subject recently. Federal Law has our hands tied and we can't give wage increases during this election period because we would then be charged with bribery. . . .
>
> * * * * *
>
> 5. *Special Southern Moldings Benefits—Profit Sharing and Miscellaneous Benefits*—Southern Moldings has a profits sharing bonus for all of its employees. If you take a hard look at other plants in this area or throughout the country, you'll find that there are very few companies that allow their employees to directly share in the profits that are made. In 1976, each of you received an average of 36-1/2 cents in profit sharing or approximately $720 extra in that year. The Company's profits substantially increased and the following year each of you received 54.8 cents per hour in profit sharing, or approximately $1,080 extra. Unfortunately, this year, because of a drop in profits, each of you only received 30.7 cents or approximately $610. We, of course, were disappointed with these lower profits but, quite frankly, we acquired new business and in acquiring that new

[10] All of the employee witnesses questioned in this regard agree that, on the day following a meeting where Noe asked why the information had not been posted, a National Labor Relations Board notice setting forth certain employee rights was posted.

business, our costs ran up more than we anticipated, thereby dragging down the profits for the year. Nevertheless, we expect that with that new business and the additional new business coming into this plant this year, our profits in 1978 will be substantially higher than last year and you, in turn, will share in those higher profits next year.

One comment about profit sharing. As you all know, I've been very open and candid about the business our company has been getting and the progress it's been making. Southern Moldings, like most companies, unfortunately has its ups and downs and cannot be expected to increase its profits every year—year after year. And while we, like you, were disappointed with last year's profits, it's really unfair that some of the employees here should reject this Company, simply because we had one year that wasn't as good as the previous year. You know, in some ways, companies are like people. They have their good days and their bad—and that's a fact of life that nobody can change.

I would also keep in mind that our profit sharing bonus is indeed a rare benefit—a benefit that is not enjoyed by most employees in this country. We didn't have to give you this benefit when we started it and we didn't have to continue it. But it's long been my view—that all of us—whether it be the person who sweeps the floor or all the way up to me as president—work hard as a team to make this Company a success. And if as a result this Company grows and becomes profitable then we should share in these profits as well.

* * * * *

We've made some mistakes, no question about it. We're just people and we are not perfect but we have never ever done anything intentionally to hurt the people who work at Southern Moldings or to take advantage of them. And perhaps most important of all, when we find out that we've made a mistake, we try to correct it.

If there is any meaning at all to this talk today about our wages and benefits, it's in that last line—we've always tried to be fair with all of our people, and you've never needed any outside help or pressure in order to make us be fair. Year in and year out your wages and benefits have improved, and our wages and—benefits will continue to improve. I can't make any promises about what we intend to do this year if we win the election or what we intend to do in 1979 or 1980 or any other year—but I can say that we've tried hard in the past to be fair with you, and if you vote for Southern Moldings in this election and defeat the UAW, we'll keep on trying to be as fair as we know how—and that includes this year and all the years that come after.

b. *The October speeches*

Howard, Edna Cox, Richardson, Charles Bramer, Shirley Meadows, Julia Cook, Nellie Boggs, and Edna Cardwell testified as to speeches made by Sullivan in October. Howard testified that, at the October 2 meeting, Sullivan talked about the union campaign. Both Howard and Edna Cox testified that he said the employees should think about their families, that if the Union got in there could be a strike and, according to Howard, that strikes were the backbone of the Union. Howard further testified that Sullivan stated that if there were a strike the Company would have the right to keep the plant operating and that strikers would not be eligible for unemployment benefits.

Richardson testified that Sullivan spoke about benefits being frozen, and that Respondent's benefits were good compared to other employers in the area union or nonunion. Howard testified that Sullivan said that during negotiations all benefits would be frozen and existing benefits, like profit sharing, could be bargained away. According to Richardson, Sullivan said that, if the Union got in, Respondent would negotiate. There would be give and take. One side would give so much and the other side would take so much. He also said that, if the employees voted the Union out on October 28, he was satisfied that profit sharing would be bigger and better the next year due to the new business Respondent had received.

Sullivan further said, according to Richardson, that it was rumored around the plant that if the Union got in he would sign the old H. K. Porter contract but that the last thing he would do was to sign the H. K. Porter contract. Howard testified that Sullivan did mention H. K. Porter at one of the meetings. According to Howard, Sullivan said something to the effect that H. K. Porter had some dies pulled from them during a strike and that some of Respondent's employees who had worked for H. K. Porter would probably remember that Richardson testified that Sullivan said that some of Respondent's frame orders from Chrysler were received while Thompson Products was on strike and that the same thing could happen to Respondent, that Chrysler could pull out its tooling and give it back to Thompson or whoever. There was also some mention of union dues.

Employee Julia Cook testified that, at the October 19 meeting, Sullivan had a paper. He began his speech by reading from the paper. However, he appeared to be adlibbing at times rather than reading verbatim. Both Cook and Boggs testified that Sullivan said they did not need a union and, according to Cook, he said he strongly urged them to vote no against the Union. Boggs testified that he further said that one of the reasons H. K. Porter had gone out of business was because the Union had sold them out, that it was because of the Union that the employees were out of jobs when H. K. Porter sold out, and that some machinery had been sold. Sullivan gave some examples of how things used to be at H. K. Porter but Boggs does not remember what the examples were. She did not hear him mention the number of employees working for H. K. Porter at the time it closed. Cook testified that Sullivan mentioned H. K. Porter in some speech but she is not sure that it was the October 19 speech. Meadows testified that Sullivan said H. K.

Porter Company had to close it doors because of the Union.

Meadows testified that Sullivan said that when there was a previous election in the plant, Ford Motor Company moved their dies out, and they never got back those jobs. He also said that if the Union got in and there were a strike, some of the employees would be without jobs. Cook testified that Sullivan said the original Southern Moldings went out on strike during contract negotiations, they were out for 2 years, and people lost their jobs and their seniority. He further said that in the event they did go out on strike, if they got any increase in wages at all, they would have to work a very long time to recoup lost wages, if they ever did.

Cook further testified that Sullivan said that, if they voted for a union, profit sharing would be negotiable. He also said there was absolutely no way that he would negotiate with the UAW. Rather, he would hire the best lawyer he could find to negotiate. One of the employees said that, Kettler had said that in the event there was a strike, the UAW would pay the premium on the employees' group insurance. Sullivan said he did not know of any union that would pick up the premium the employer paid for the employees' insurance.

Meadows testified that some employees asked questions regarding initiation fees and union dues, which Sullivan answered. According to both Meadows and Boggs, he said if they got a union their union dues would be used for things like buttons and posters and he mentioned the number of buttons that Boggs was wearing. Boggs testified that he asked her, "[D]on't you think one button is enough rather than so many?" Then he said it was not an insult. Boggs said he was not insulting her.

Sullivan testified that he read both the October 2 and the October 19 speech verbatim without any elaborations and that each of the two meetings lasted about 10 minutes. He does not recall any questions at the October 2 meeting. At the October 19 meeting, he was asked one question. An employee asked, "What union dues were used for?" Sullivan replied, "to conduct campaigns, to buy union buttons." Sullivan then referred to the numerous buttons worn by Boggs, saying, "[Y]ou don't need to wear that many, one would be sufficient." He also told Boggs that he was not ridiculing her.

The prepared text of the October 2 speech reads, *inter alia*:

> This elections is about the word "negotiations." If the UAW wins the election on October 27, the UAW wins the right to negotiate with Southern Moldings. Federal Law requires Southern Moldings to negotiate in good faith with the UAW if the UAW wins the election, and we'll certainly do that. The Union will probably have their expert negotiators on their side on the table. And since I'm not an expert at negotiating labor contracts—I will hire a professional to bargain on our side.
>
> Another point you should know is that while negotiations are going on, *your* wages and *your* insurance benefits and *your* holidays and *your* vacations are all frozen under that same Federal law. If the Union wins the election increases in wages and benefits must be negotiated by the mutual agreement of the Company and the Union, and as you know, collective bargaining negotiations can be long and hard and can last for several weeks—or several months. This means that any additional wage increase or benefit that might be given after the election could very well be delayed should the Union win the election and negotiations take a long time.
>
> By the way—on this point—the Union and some of its supporters would like you to believe that if the Union wins the election, there will be automatic increases in your wages and benefits or even worse, that we are going to sign the old H. K. Porter agreement. Well, to be completely honest with you—nothing can be further from the truth.
>
> As some of you may know, in labor negotiations, an employer has the same right as the Union to bargain for changes in wages, benefits, and working conditions, and there is no legal requirement for a company to make concessions. In fact, Federal law requires good faith bargaining, but specifically states that an employer does *not* have to make concessions during negotiations. And perhaps even more important for you to understand is that collective bargaining is truly a *two way street.* It is common for some existing benefits to be lost or traded away for something else during negotiations. For example, it it entirely possible that, should the Union win the election, you may lose some of your benefits like the profit sharing bonus during the give-and-take process of negotiations. So again, give a little thought to this union and negotiations and what it all means to you—and your families. I guess what I'm trying to say that no one knows *how* negotiations are going to turn out. You may gain new benefits or you may lose existing benefits—but one thing is sure—there are no guarantees.
>
> Of course, the big question about labor negotiations is what will happen if Southern Moldings and the Union are unable to reach an agreement? Well, even though the Union organizers and union supporters would like to believe that the word "strike" isn't in the dictionary, the fact is, it's in more than the dictionary. It's part of the very lifeblood of the UAW and all other unions. When companies and unions don't reach an agreement, what usually happens is that the union goes on strike—and that's a fact. One of the facts about strikes that you may not realize is that the union officials calling a strike have nothing to lose—they keep getting their salaries and their benefits. On the other hand, the striking employees are without a paycheck, without insurance and other benefits. Yet, those employees still have to pay their bills and take care of their families during that period.
>
> I don't know how many of you have ever gone through a strike before, but there are a few facts you ought to know, and since I'm sure the UAW union people aren't going to tell you these facts—I will. First, under Federal law, an employer has a

absolute right to continue operating during a wage and benefit strike. Second, strikers lose all of their wages and benefits during the period of the strike, and under Kentucky law, strikers cannot collect unemployment compensation. And third, the amount of money that you lose during the strike is very often never *ever* made up by the extra increase which you may—and I say may—receive after the strike. For example, just think about *this* for a few seconds. If you make $175 a week and go on strike for five weeks, and after the strike, you "win" an extra 10-cent wage increase over what you would have received without the strike, it will take you more than four years of your working life to make up the wages and benefits which you lost in the strike. Think about that—four years of your working life just to break even. And if the strike lasts beyond five weeks, it will take just that much longer for you to make up what you lost during the strike—and then there's no guarantee that you will "win" an extra 10-cent wage increase. Think about it and then think some more—because you're the ones that have to vote in the election and those aren't just numbers to you—those are *your* dollars and those are your years. That's why I say that unions don't give—they take!

It's really going to be up to all of you to decide what kind of future you want at Southern Moldings and if you really need the UAW or any other union to be treated fairly. We've made a lot of progress over the years in wages and benefits and you never had to strike to get those things in the past.

On October 6, Respondent distributed a letter to all employees stating much the same thing as in the prepared text of the October 2 speech. The body of the letter reads, *inter alia*:

> Some people believe that if the union wins the election there will be some kind of automatic increase in your wages and benefits. The union and its hard-core supporters want everyone to believe that this is true. But, in fact, almost the exact opposite is true!
>
> You see, this election is not really about increased wages and benefits—the election is about the word "negotiations." If the UAW wins the election on October 27, the UAW only wins the right to negotiate with Southern Moldings. Federal law requires Southern Moldings to negotiate in good faith with the UAW if it wins the election and we will certainly do that. But what that really means is that Southern Moldings will sit down with a group of union people, some of whom don't even work here and discuss *your* insurance benefits, *your* holidays and vacations, and *your* profit sharing bonus. And you should know that during the entire time these negotiations are going on, *your* present wages and benefits are frozen. Under Federal law, if the union wins the election, increases in wages and benefits must be negotiated and agreed to between the Company and the union. And, as you all know, collective bargaining negotiations can be long and hard and can last for several weeks—or several months. And this is especially true for a first negotiation between a newly-elected union and an employer.
>
> Another thing you ought to know about negotiations—an employer has the same right as the union to bargain for changes in wages, benefits and working conditions, and there is no legal requirement for a company to make concessions. In fact, Federal law requires good faith bargaining, but specifically states that an employer does *not* have to make concessions during negotiations, and let me assure you that this Company will never agree to any proposal which we believe would be damaging to the well-being of our Company and to the well-being of the people who work at Southern Moldings. But perhaps more important for you to understand is that collective bargaining is truly a two-way street, and it is common for some existing benefits to be lost or traded away for something else during negotiations. I guess what I'm trying to say is that no one knows how negotiations are going to turn out. You may gain new benefits or you may lose existing benefits—but one thing is sure—there are no guarantees.
>
> Of course, the big questions about labor negotiations is what will happen if Southern Moldings and the UAW are unable to reach an agreement? That's when the tough problems and the hard words would come into all of our lives—strikes—lockouts—picket lines—injunctions—and maybe even worse. If our negotiations with the union ended up in a stalemate, the union would probably call a strike, and then what? No pay—no benefits—no nothing, not even unemployment compensation—just hard days for all of us. Furthermore, I want to emphasize and this is the absolute truth—in the event of a strike, the Company has a legal right to continue operating. Second, strikers lose all of their wages and benefits during the period of this strike, and under Kentucky law, strikers cannot collect unemployment compensation, no matter how long the strike lasts. And third, the amount of money that you lose during the strike is very often never ever made up by the extra increase which you may—and I say may—receive after the strike.
>
> * * * * *
>
> And for your information, the UAW union that is trying so hard to get into Southern Moldings is not shy about calling strikes. For example, at Elkton Die Casting Company in Elkton, they called a strike last year that lasted six months involving 60 employees. At Airtemp Corp. in Bowling Green, this same UAW called a strike last year that lasted seven months involving 450 employees. And then there was the five-week strike that took place at International Harvester in Louisville this past spring. Enclosed are some newspaper clippings on this subject which I thought might be of interest to you.

You know there's one other thing about strikes that union officials rarely tell you and that is these officials have nothing to lose. They keep getting their pay checks and their benefits. But the poor strikers—no pay, no insurance coverage, and no other benefits during the strike, yet the striking employee still has to pay bills and take care of his family. And don't let the union fool you into believing that its strike fund will take care of you during the strike. Strike benefits are only a small percentage of your take home pay and hardly helps a striker to feed his family or pay his bills.

The prepared text of the October 19 speech reads, *inter alia*:

As you may have heard before—union don't create jobs—employees do. And whether the jobs are there depends on the companies' ability to make quality products at a price they can sell—and when the Company can introduce new ideas and a better line of products to attract more and more business. You see—when a company's growth stops and its business starts slipping and becomes uncompetitive and unprofitable, then jobs start disappearing. And this fact about job security is true with or without a union.

Time and time again, I talked to managers of companies our size whose employees voted to go union. They all say the same thing. It's not necessarily wage and benefit costs that hurt these companies, because they are often able to negotiate less in wages and less in benefits than they would have given without a union. What hurts is the loss of production and the rising costs that come from the restrictive practices and hassling that a union can often bring. For example, at the old H. K. Porter operation—when you worked on Saturdays or over time it took seven employees to operate one rolling machine.

Based on their leaflets, it's clear that the UAW is trying to make you believe that it has some magical power to guarantee you job security. I think, in all fairness, this is something that all of you will have to decide for yourselves. But before deciding, let's look at some of the facts on this subject.

For those of us here who have been around for a while, the perfect example of these kinds of problems is the old H. K. Porter operation, when this plant opened up in 1959, as an H. K. Porter operation, it had 500 employees, and when it closed it has 150 employees, a net loss of 350. And the Union at H. K. Porter could do nothing about it.

Actually before H. K. Porter took over this plant there was a previous Southern Molding operation here. Some of you may remember back to around 1957 when the union struck Southern Molding for about 4 weeks. Ford ordered us to ship the dies and presses to a competitor in Georgia and this work did not come back to us when the strike was over—resulting in the loss of 50 to 60 jobs. Also, some of you were laid off for 2 years as a result of that strike.

Another good example is the present Southern Molding operation. As you know—Thompson Products, Division of ITT, is a competitor of ours. In April 1977, the UAW struck Thompson Products. Chrysler pulled its dies for the 012 and 013 parts out of the Thompson plant and gave them to us to make and that work stayed here permanently after the strike was over. That work involved 60 jobs—(60 jobs that many of you now have that used to belong to those good ol' members of the UAW).

And do any of you really think the UAW was able to do anything about the transfer of this work to our plant and get these members back their jobs? Well, to be quite honest with you—things have not gotten better at Thompson Products. In fact—Thompson Products appears to he unable to stay competitive and is slipping. Just this last month, we got the 042 and 043 parts business. That created 30 more jobs that some of you are now working—jobs that also used to belong to those good ol' union members at Thompson Products.

So the next time the UAW people promise you more job security ask them what they've done recently about Thompson employees' job security. The real truth of the matter is that you—and I mean you—make your own job security by your own hard work—and you sure don't get that from unions.

In sum, we have been able to provide you with secure jobs here because we've been able to keep our plant operating efficiently, competitive and growing. We can continue operating successfully in the future proving we all pull together and work as a team like we've done in the past. I know it sounds corny, but it's true. I've seen too many plants and too many employees go down the drain because everyone lost sight of these basic facts and because they thought they could get something for nothing.

So think about what you have now without a union—your wages—your benefits—your job security and a company that really cares about being fair and improving each of these every year.

Then think about the problems that are not part of your life today—problems like union dues, fees, fines, labor negotiation strikes, picketing, injunctions. Quite frankly, I can't understand why anybody would want to gamble and possibly make these problems part of their lives by voting the Union in. Remember—you can never have these problems if you don't vote for the Union in the first place.

So I urge you—give us a chance—vote "No" "Union" next Friday.

Thanks for your attention.

* * * * *

During the past week or so, I've been asked quite a few questions and I thought I would share a few of these with you.

Q. If the Union loses the election, will Southern Moldings fire the union supporters?

A. You know, unions will often use scare tactics like these to make you believe that you have to vote for them. Well—the answer to this question is absolutely not. If the Company wins the election, I guarantee you that we will not discharge or mistreat any employee for engaging in union organizing activities. Let me repeat it—if the Company wins the election, we will not discharge any employee for union activities.

Q. Is there anything new happening with our annual wage increases?

A. The only thing new is that our lawyer is talking with government officials from the National Labor Relations Board on the subject. If we are told that Southern Moldings can legally give out the wage increases before the election without running the risk of the government charging us with trying to bribe your vote, I'd give out the raises tomorrow. Unfortunately, as I understand the law—the Company's hands are tied at this time. In any event, when this election is over, you'll be getting your raises no matter how it turns out. And that's because you all worked hard for them and you all deserve them.

Q. It is true that if you vote the union in, it is just as easy to vote it out if you don't like what it does?

A. That absolutely false! Once a union gets in, it's almost impossible to get it out. For example, if the union gets in and gets a two or three year contract—and even then—Federal law has created many obstacles and makes it very difficult to vote a union out. Now, it's true that we were successful in throwing the AIW out of Southern Moldings a few years ago, but that involved a different union and another time. At the next meeting, why don't you ask the UAW when the last time they were decertified and thrown out of a plant. I'll bet the UAW man won't give you one instance where it occurred. So, for all practical purposes—once you bring the UAW into this plant, you're going to be stuck with it whether you like it or not—stuck with the problems of paying dues—stuck with the possibility of strikes—and stuck with the general unhappiness it causes. In contrast under Federal law, if you vote against union representation in this election, you can request union representation a year from now if you believe the Company has mistreated you during the year.

Any more questions or comments?

It is undisputed that Sullivan did not read his last speech, given October 25 and 26. Employee Edna Cardwell testified that Sullivan said Respondent was a small company, just getting started, it needed to grow, and he did not think a union was needed because Respondent had been fair with them. He said the Union was the reason H. K. Porter closed. He also said that, when the other union was there, Ford Company removed its dies. She does not recall whether he said it was when the Union came in or during a strike. Sullivan further said that if the Union came in and the employees went on strike Chrysler would, or could, do the same thing. Sullivan also said that some of Respondent's current contracts were obtained when another company was on strike and that if Respondent lost the contracts it would have to close its doors because there would be no jobs.

Cook testified that Sullivan said he had a prepared speech but he was not going to read it. He urged them to vote no against the Union. He said Respondent was a small company just starting out in business and, if the Union came in, it would ruin him. He further said Respondent had obtained some jobs because Thompson Industries was out on strike. According to Cook, he did not mention H. K. Porter. Bramer testified that Sullivan said Respondent was too small for a union, that it was not like H. K. Porter, that the Union would hurt the Company, instead of helping it. He does not recall that Sullivan explained how it would hurt Respondent nor if he made any specific predictions as to what would happen it the Union came in.

Sullivan testified that he said he had a lengthy speech but he had already discussed the subject matter of the speech in previous speeches, so he did not think it was necessary to go over it again. He asked the employees to give Respondent a chance to show them what it could do. He said Respondent was a small company owned by a few people, but if it were saddled by restrictive practices that made it noncompetitive it would in the course of economics lose business. Accordingly to Sullivan, he also said that it was not a big company like H. K. Porter and it could not afford to get itself in a noncompetitive position because Respondent did not have the luxury of being able to shut down and just operate other plants such as H. K. Porter did. He admits that he said that Chrysler could do the same thing to the new Respondent as Ford did to the original Southern Moldings back in 1957. He also mentioned that the original Southern Moldings closed down in 1959.

3. Conclusions

I do not credit Sullivan that he read the first four speeches verbatim without ad libbing or paraphrasing, despite his ingenuous attempt to negate the conflict between his testimony and that of other witnesses as to his manner of delivery. The employee witnesses questioned in this regard, whom I credit, agree that he did not appear to be reading all of these speeches verbatim. Some of them I have found to be credible in other regards, and although none of them exhibited anything close to total recall and they varied widely as to what portions of the speeches they recalled and the specific words used, in most instances the substance of their accounts are generally corroborated by Sullivan and the written texts of the speech.

There are only two substantial conflicts between their testimony considered in the composite, and the prepared text. Noe, Joe Cox, and Richardson testified that Sullivan said, if the Union were defeated, profit-sharing bonuses would increase, Meadows, Joe Cox, and Cardwell testified that he said H. K. Porter had to close its plant because of the Union. Other Respondent witnesses did

not testify in corroboration of Sullivan's denial that he made these statements. I credit Noe, Joe Cox, Richardson, Meadows, and Cardwell. As to the October 26 speech, aside from the credibility issue raised by Sullivan's general denials which I have already resolved, the testimony is not contradictory and I find that a composite of the testimony more accurately reflects what occurred.

The complaint alleges that, in his October speeches, Sullivan threatened employees with plant closure and announced to them the futility of selecting the Union as their collective-bargaining representative.

One of the basic themes of Sullivan's speeches was job security and the effect of unionization thereon. The thrust of his message was that a union could not guarantee job security, that when a business becomes uncompetitive and unprofitable jobs start disappearing. This theme was touched upon in earlier speeches but it really flowered in the October 19 speech. There Sullivan said he had talked to managers of unidentified and unnumbered companies whose employees voted to go union. They all say the same thing. *It is not necessarily wage and benefit costs that hurt these companies, because they are often able to negotiate less in wages and benefits than they would have given without a union. What hurts is the loss of production and the rising cost that come from the restrictive practices and hassling that a union can often bring.*

Then, as prime examples, he cited Respondent's predecessors—H. K. Porter and the original Southern Moldings. He said the original Southern Moldings had a strike in 1957 for about a month during which time Ford removed its dies and presses. After the strike, the jobs were not recovered resulting in the layoff of some 50 to 60 employees. H. K. Porter decreased in size from 500 employees when it opened in 1959 to 150 when it closed. He mentioned that Respondent had obtained some of its present contracts which provides 60 jobs as a result of Chrysler removing its dies from Thompson Products when the UAW struck Thompson in 1977. He mentioned the Union's inability to reacquire those lost jobs for its members and then stated that things have not gotten better at Thompson, that it appears unable to stay competitive and is slipping, and that, during the previous month, more contracts, providing 30 jobs, that had once gone to Thompson were awarded to Respondent—all at the expense of union members at Thompson.

The implication throughout, particularly when coupled with statements that H. K. Porter had to close because of the Union, is that the Union caused the problems at H. K. Porter, the original Southern Moldings, and Thompson Products. At no time, either during his speeches or on the witness stand did he offer a factual basis for such conclusion. And then, on the day before the election, any employee who had missed the implication received an unmistakable message. Sullivan said Respondent was a small company just starting out in business and, if the Union came in, it would ruin him and that, if there were a strike and Chrysler removed its dies, Respondent would have to close its doors because there would be no jobs.

In his October speeches, Sullivan also emphasized the difficulties likely to be ecountered during negotiations, the likelihood of protracted negotiations, the absence of any legal requirements that Respondent make concessions, the probability of a strike, the certainty that Respondent would continue its operations during a strike with a concomitant loss of jobs to strikers and the likelihood that any financial gains secured in negotiations would be wiped out by the financial loss incurred during the course of a strike. Although these statements were carefully worded in terms of possibility, from the totality of Sullivan's speeches and letters, including the reference to predecessor employers mentioned above, the statement in the October 6 letter, "Some people believe that if the union wins the election there will be some kind of automatic increase in your wages and benefits. . . . But, in fact, almost the exact opposite is true, the October 19 statement that employers "are often able to negotiate less in wages and less in benefits than they would have given without a union," the placement of the bonus for the withholding of the annual wage increase on the Union and its quest for representation rights—it is clear that Respondent intended to, and did, weave a warped pattern of all the negative aspects of unionization and presented it as the most likely result if they selected the Union as their collective-bargaining representative.

Respondent argues that Sullivan's speeches and letters were permissible expression of views protected by Section 8(c) of the Act. Section 8(c), of course, permits the employer to communicate his views regarding a union and/or unionism so long as such expression does not contain a threat of reprisal or promise of benefit. However, as stated by the Supreme Court in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 617-619 (1969):

> Any assessment of the precise scope of employer expression, of course, must be made in the context of its labor relations setting. Thus, an employer's rights cannot outweigh the equal rights of the employees to associate freely, as those rights are embodied in §7 and protected by §8(a)(1) and the proviso to §8(c). And any balancing of those rights must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might be more readily dismissed by a more disinterested ear.

Thus, it is not necessary that a threat of reprisal or promise of benefit be blatantly explicit. Cleverly worded predictions may be violative of the Act even though carefully couched in terms of possibilities. The Supreme Court addressed this problem in *Gissel*, stating:

> [A]n employer . . . may even make a prediction as to the precise effect he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control or to convey a management decision already arrived at to close the plant in case of unionization. . . . If there is any implication that an em-

> ployer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion, and as such without the protection of the First Amendment. We therefore agree with the court below that "[C]onveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, the eventuality of closing is capable of proof."
>
> As stated elsewhere, an employer is free only to tell "what he reasonably believes will be the likely economic consequences of unionization that are outside his control," and not "threats of economic reprisal to be taken solely on his own volition."

Considering the totality the speeches and letters, and Respondent's other concurrent unfair labor practices, I conclude that these speeches were intended to and did impress upon employees the futility of selecting the Union as their collective-bargaining representative and clearly conveyed to employees the impression that unions inevitably bring uncompetiveness, strikes, loss of jobs, and eventually plant closure. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act. *N.L.R.B.* v. *Gissel, supra; Essex Wire Corporation*, 188 NLRB 397 (1971); *G.C. Murphy Company*, 223 NLRB 604 (1976); *Russell Stover Candies, Inc.*, 221 NLRB 441 (1975); *Herbert Kallen d/b/a Smithtown Nursing Home, Smithtown Senior Home, and Smithtown Lodge*, 228 NLRB 23 (1977); *Willows Mfg. Corp.; Oak Apparel, Inc.*, 232 NLRB 344 (1977).

The complaint further alleges that, in his speeches, Sullivan made promises of benefit and also threatened employees with loss of benefit if they selected the Union as their collective-bargaining representative. Specifically, the General Counsel contends that Sullivan promised increased profit-sharing benefits. I find that although Sullivan spoke in terms of increased profit sharing there is nothing to indicate that such increase would flow from any change in the present method of computing the amount of such bonuses. Rather, the increase was stated in terms of increased business and presumably increased profits. Accordingly, I find that Respondent did not violate Section 8(a)(1) of the Act by promising employees economic benefits if they chose the Union as their collective-bargaining representative.

However, these statements as to future increased profit-sharing bonuses were linked to dire predictions as to the negative effect on profit-sharing if the Union won the election. Thus, Sullivan stressed that profit-sharing could be lost as a result of negotiations. Furthermore, he stated that employers could often negotiate less in wages and benefits than they would grant if their employees were not represented by a union, he misrepresented the applicable law by his unqualified statement that all wages and benefits would he frozen during the course of negotiations and finally he specifically said that the employees would lose profit sharing if the Union won the election. In these circumstances, and in the context of the unlawful nature of other statements made in these speeches, I find that, in violation of Section 8(a)(1) of the Act, Respondent thereby threatened employees with loss of economic benefits if they selected the Union as their collective-bargaining representative.

D. *The Witholding of the Annual Wage Increase*

The parties stipulated that Respondent gave employees across-the-board wage increases in mid-September during the 3 years preceding the Union's organizational campaign. In Sullivan's September speeches, he stated that the Federal Labor Law required that he not grant their annual wage increase until after the election. By letter dated September 28, Union Representative Kettler informed Sullivan that the granting of annual wage increases was indeed permissible during the course of a union organizational campaign, urged him to grant the increase retroactively, and offered to sign an affidavit in the presence of a notary public stating that the Union would in no way object to any annual wage increase given the employees. Nevertheless, Respondent neither granted the wage increase nor corrected its misstatement of the law.

Immediately following the election, Sullivan sent a letter to all employees dated October 30, the body of which reads:

> We want to thank the majority of our employees for supporting Southern Moldings in last week's election. The election period has been difficult for all of us but now it's over, it's time to put aside our differences and pull together so that we can all work to make our Company a better place to work.
>
> The legal "freeze" on wage increases and promises that existed before the election continues until one week after the election, so we are unable at this time to make any announcements or talk with you privately about your own situation. However, we can say that we have learned a great deal during the campaign, about you, about us, and about some of the conditions at Southern Moldings, and we certainly intend to put that knowledge to good use.
>
> As we have said many times during the campaign—only by talking and listening to each other and working together can we make Southern Moldings a finer place to work. If there has ever been any doubt in your mind about your right to bring problems and complaints directly to us, without going to an outsider, please cast them aside today, once and for all. Our doors are open—they always have been and they always will be, and we urge you to let us know what's on your mind.

We believe that Southern Moldings is now entering a period of significant growth. With hard work and a little luck, it should be rewarding to all of us.

On November 6, Respondent granted all employees a wage increase retroactive to September 17.

It is well settled that an employer may not grant wage increases or other benefits to employees for the purpose of inducing them to vote against the Union. *N.L.R.B.* v.

Exchange Parts Company, 375 U.S. 405 (1964). However, an employer is also precluded from withholding a scheduled or previously planned benefit because of a union organizational campaign. Rather during the course of a union organizing campaiqn, an employer must decide the question of granting or withholding increases in wages and benefits just as he would if the Union were not in the picture. *The May Department Stores Company, d/b/a Famous-Barr Company*, 174 NLRB 770 (1969); *G.C. Murphy, supra; Gulf States Manufacturers, Inc.*, 230 NLRB 558 (1977); *Baker Brush Co., Inc.*, 233 NLRB 561 (1977); *Osco Drug, Inc., a wholly owned subsidiary of Jewel Food Companies, Inc.*, 237 NLRB 231 (1978).

Here, Respondent has granted wage increases to all employees in mid-September for the preceding 3 years. Thus, it is undisputed that a September wage increase is part of Respondent's established wage policy. In these circumstances, I find that the withholding of the wage increases was violative of Section 8(a)(1) of the Act. The cases cited by Respondent, in support of its argument that its conduct was permissible, are inapposite in that they either do not involve scheduled or previously promised increases or the withholding of the increase occurred, contrary from that herein, in a context free of any attempted to place the onus on the Union for the withholding of the increase.

E. *Other Alleged Preelection 8(a)(1) Conduct*

1. Gardner's interrogation of Cook

Cook testified that in August, the morning after the first union meeting, she was sitting at Gardner's desk reading the paper prior to the start of the shift. Gardner walked up to her and asked, "Well, did you go to the meeting yesterday?" Cook said, "Yes" and continued reading the paper. Gardner said, "Well, what did they do?" Cook said, "about the same things as always." Gardner started to walk away and then turned back to Cook and said, "Well, I reckon if they get a union in here they're going to elect you president." Cook said if they did she would come after him first thing. Gardner denies this conversation.

As indicated above, I find Cook to be an honest, forthright witness whom I credit. Althouqh not specifically alleqed in the complaint, this conduct was fully litigated at the hearing. Interrogation of Cook as to whether she attended a union organizational meeting and as to what occurred there is clearly coercive. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.

2. The interrogation of various employees as to Sullivan's speech

Several employees testified, without contradiction, that after Sullivan's September 11 speech they were questioned by their supervisors as to their reaction to the speech. I credit their testimony in this regard. Noe testified that on the day after the speech his foreman, John Cochran an admitted supervisor, asked him what he thought about Sullivan's speech the day before. Cochran said he thought Sullivan was telling a bunch of lies and he was tired of hearing his lies. Noe further said that one person was being required to do the work of three or four people, that there were too many chiefs and not enough indians. Cochran did not testify.

Employee Frank Richardson testified that, during the afternoon of Septemher 11, Gardner asked him what he thought of Sullivan's meeting. Richardson said he thought it as "full of shit." About an hour or so later, Stansbury delivered an insurance check to Richardson and asked what Richardson thought of the meeting. Richardson gave him the same answer he gave Gardner. Richardson also testified that he heard Stansbury and Gardner ask Joe Cox and employee Terry Waldridge the same question.

Joe Cox testified that Gardner came over to his work station and asked, "What did you think about the meeting?" Cox said, "not much." Gardner then asked, "What had the Company ever done to Cox?" Cox said, "[T]he Company had never done anything to me." Gardner said, "I think the Company has been awfully good to you and I can't understand your point of view on wanting a union. Why do you think a stranger can get a raise for you?" Cox asked if Gardner thought Sullivan would give them a raise if they asked him themselves, and said he doubted it. Gardner said, "Do you think a stranger, an outside union can get you that raise?" Cox said, "Well, I don't know." Gardner asked how Cox felt about it. Cox said, "Right now I think all of the people want it. Right now they don't have any say about it." Gardner then proceeded down the line and talked to all of the welders individually. Gardner did not testify with regard to these conversations.

I find that the above interrogations were coercive attempts to get the employees to indicate their union sympathies. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act.

3. Sams' alleged threatening of employees with loss of jobs

Employee Charles Bramer testified that in late October he, Sams, and employee Bill Hockingsmith and Juanita Johnson were engaged in informal conversation when one of them brought up the subject of the Union. Bramer does not recall who initiated the subject. During the course of the conversation, according to Bramer, Sams said, "[A]ll right, if the Union comes in, you'll go on strike the first thing that happens, you'll be out for a long time." He further said Chrysler would come in and pull the dies out and Respondent would lose the jobs. Sams also said in this or a later conversation that one of the reasons H. K. Porter had shut down was because the union contract had required excessive manning for various machines. Sams cited as an example a tow motor for the roller machines which would "sit around most of the time."

Sams testified that Hockingsmith asked if the Union won the election, and went out on strike following a failure to reach an agreement, would there be a layoff. Sams said it was possible. Hockingsmith asked how did a strike relate to a layoff. Sams explained that much of their equipment belonged to Chrysler and Chrysler did have the right to remove their equipment if Respondent could

not produce the parts for their stamping factories. Sams then said that if that happened there possibly could be a layoff.[11]

Bramer denies that Sams said Chrysler could possibly pull its dies. According to him Sams said Chrysler would remove its dies.

I credit Bramer. He impressed me as an honest, reliable witness and his testimony in certain other regards is corroborated. I conclude that Sams' statements constituted a threat of loss of jobs if the Union won the election. This is particularly true in view of the similar contemporaneous statements made by Sullivan which I have heretofore found unlawful and that Sams' experience upon which he allegedly based his "opinion" involved no actual layoffs, a point he failed to mention. In the circumstances, I find that Respondent thereby violated Section 8(a)(1) of the Act.

F. *The Boggs Suspension*

1. Facts

Nellie Massie Boggs began her employment with Respondent around May 1977. At the time that she signed a union authorization card on Auqust 15, 1978, she was assigned to the first shift. She distributed union literature and wore a union button, as did a number of other employees, everyday at work on the first shift. On or around September 24 or 25, Boggs and employee Connie Tabor were transferred to the second shift. On her first day on the second shift she wore a union button. Both Boggs and her foreman, Sams, testified that on that day she was the only employee on the second shift wearing a union button.

Boggs testified that on the second or third day that she worked on the second shift. Sams asked her if she were for the Union. Boggs said she was on the halfway line. Sams said they did not need a union, that things would get better. Sams said the reason day-shift employees wanted a union was the manner in which Gardner spoke to employees. Boggs said, yes, that was one of her reasons too. Sams asked if Tabor was for the Union.[12]

Sams testified that he assigned Boggs to a joh and then later stopped and asked her how she thought she was going to like working on the niqht shift. Boggs said she thought she was going to like it just fine. She then asked, "Do you miss anything." Sams replied, "Yeah, I wasn't going to say anything about it, but being as you brought it up, why did you take your button off?" Boggs said, "No one else is wearing them so I took mine off." Sams said that was her prerogative, she could wear it or not, it did not matter to him. Sams admits that Boggs may have worn a union button a week or two before four or five other employees on the second shift started wearing union buttons. Sams specifically denies that he ever asked Boggs what she thought ahout the Union or questioned her in any way regarding her union sympathies or those of Tabor.

Boggs was absent on October 18. She called in to report her absence at or about 4:30 on the 18th, a half hour after her shift began. Boggs was also absent on October 19. Her husband Tom Boggs called in at or about 9:50 p.m. and reported that she was sick. Boggs returned to work on October 20. That day, she had about 20 union buttons displayed on her clothing. This was the first time she had worn a union button at work after her first day on the second shift. Boggs testified that this was also the first day that she had seen other employees on the second shift wearing union buttons.

Sullivan held a meeting of employees that day at which he commented to Boggs that one button would be enough. Then he said he was not trying to ridicule or insult her. As indicated more fully in subsection c, herein, this statement was made in answer to an employee's question about union dues and was made in the context of a comment that union dues paid for posters, buttons, etc. After the meeting, during her break, Boggs distributed seven or eight union buttons to her fellow employees. She also distributed some while the employees were assembling for the meeting.

Later that evening at or about 12:15 a.m., Sams handed Boggs a sealed letter without comment as to its contents. According to Boggs, she thought it was one of Respondent's campaign letters so she placed it in her purse, returned to work, and did not read it until the following day. The letter, dated October 19, addressed to Boggs and signed by Stansbury, reads:

> You were warned in writing on January 13, 1978 that failure to report absences is a violation of Company policy. As you know, employees are required to report any absence prior to the start of the scheduled shift. You did not report your absence of 10/19/78 until 9:50 pm, 5 hours and 50 minutes after the start of your shift. There are no extraordinary situations present which would have prevented you from presenting notification in the prescribed manner. Therefore you are suspended for three days, October 23, 24, and 25, 1978 without pay. In addition you are warned that the next time you violate Company policy you will be dismissed.

Thereafter Boggs discussed her suspension with Stansbury. According to her, Stansbury said he had given her a written warning in January. Boggs testified that she never received such a warning and that during the discussion she told Stansbury that she did not receive the warning. Boggs further testified that she had received a couple of verbal warnings from Gardner on the first shift for not calling in to report her absence, but she had never received a verbal warning for calling in late. When Gardner gave her the verbal warnings, he told her to make sure she called in. According to Boggs, she does not have a telephone so she has always called in whenever she had the opportunity to go to the store to telephone. She has called in late into the shift several times. No supervisor ever said anything to her about calling in

[11] Sams testified that he worked for H. K. Porter, Respondent's predecessor, as a setup man. According to him when H. K. Porter was in negotiations and could not reach an agreement, Ford Motor Company came in and pulled some dies and equipment. These dies were placed on pallets. However, the strike was settled in a day and a half and the dies were replaced on the machines. No one was laid off.

[12] During the hearing, counsel for the General Counsel represented that testimony was adduced solely for background.

late. Nor has she ever explained to a supervisor why she calls in late.

Employee Frank Richardson also testified that he does not have a telephone and he has to go into town to telephone. Consequently, he called in late in the afternoon on or about three occasions in 1978 prior to the election and has even failed to call in. He has never been counseled, reprimanded, warned, or otherwise disciplined for failure to report an absence properly. Richardson also testified that, at a meeting in January, Stansbury and Sullivan talked to all shift employees about attendance. According to him, they did not say what the attendance policy was. They just said that attendance was bad and it was going to have to cease. He recalls no statements regarding calling in to report absences. The meeting lasted about 15 minutes.

Boggs admits that Gardner told her that she would be subject to further disciplinary action if she failed to call in. She also admits that in January she attended a meeting of employees where both Sullivan and Stansbury spoke about problems of absenteeism and attendance. She admits they pointed out the importance of regular attendance and, if one had to be absent, of calling in before the beginning of the shift. She does not recall either of them mentioning a requirement that absences be reported before the first break. However, she admits that some supervisor had told her that absences should be reported no later than the first break and that prior to her suspension she was aware of this requirement and of the possibility of disciplinary action if she failed to do so.

Stansbury testified that he began working for Respondent as personnel manager in mid-November 1977. At that time, Respondent was experiencing problems relating to absenteeism. Solving this problem was one of his first assignments. He found that one of the major problems was that no one had any idea at the beginning of each shift who was going to be absent and who was going to be tardy. Consequently, it was difficult for the foreman to make job assignments. By the time he had identified the specific problems and formulated recommendations, it was close to the Christmas vacation, so Stansbury suggested to Sullivan that they draft a policy statement which would be posted and explained to employees at a meeting of employees to be held after Christmas. Stansbury recommended that employees be told that the policy as to absenteeism had not been correctly enforced in the past but that it was going to be enforced in the future.

Production resumed on January 2. According to Stansbury, a meeting was held for each shift on January 3 or 4 during which Stansbury read to the employees a prepared policy statement, copies of which he placed on the two bulletin boards in the timeclock area immediately after the meeting concluded.

ABSENCE REFORCING POLICY

> All employees will report absences. When an employee is not able to report for work on time, or will be absent, he or she is expected to notify the personnel office *before* the start of the shift. If, for some special reason this cannot be done, then the personnel office should be notified as soon as possible.* Unless the employee has given a definite period of time that the absence will last (such as "I will not be in for work on Tuesday, Wednesday and Thursday because of minor surgery," etc.), the employee is expected to report his or her absence before *each* shift to be missed. For example, if an employee calls in sick on Tuesday, reporting that he or she will be out only that day, he or she must report again if Wednesday is to be missed.
>
> In the case where an employee has sick leave or another leave of absence he or she must report when the leave will begin and the date when he or she will be back for work. If an employee returns early he or she must notify the personnel office prior to reporting for work If an employee is not able to return to work when he or she originally thought, he or she must report this to the personnel office before the day he or she was to return.
>
> * As soon as possible means by the end of the first break on the scheduled shift.
>
> EFFECTIVE January 1, 1978

On December 19 and 20, 1977, Boggs had unreported absences, and on January 3, Stansbury gave Gardner absence reports relating to this 2-day absence with instructions to warn Boggs that failure to report an absence is a violation of policy and that future violations will require discipline. Gardner testified that he gave Boggs the verbal warning on January 3.

On January 5 Boggs had an unreported absence. Stansbury testified that on January 13 he gave Gardner a written warning addressed to Boggs and instructed Gardner to give it to Boggs and explain that it was a written warning for failure to report her absence on January 5. Later that day, according to Stansbury, he asked Gardner if he had given the warning to Boggs and explained it and whether she had any questions. Gardner said he had given it to her and explained what it was but she did not say anything. Gardner testified that he did give Boggs the written warning, the body of which states:

> In reviewing your attendance record we have found that you recently had two unreported absences. One on 12-20-77 and again on 1-05-78. You received a verbal warning for your absence of 12-20-77. It is a long standing company policy that employees will report all absences. Since you were warned once and have still chose to ignore this policy, we must now formally warn you that future violations will result in disciplinary action, possibly suspension without pay.
>
> If you have any questions concerning this please discuss it with your foreman.

Boggs testified that she was never given this written warning. She also testified that she does not know if a policy statement as to reporting absences was posted on the bulletin board. Frank Richardson, an employee of Respondent for 3 years, testified that, prior to Novem-

ber, he was never aware of a company policy that you have to report your absence prior to the start of the shift and he had never seen a written policy relating thereto or to disciplinary procedures. He further testified that in early November, Gardner gave him a two-page document. The first page read:

ABSENTEEISM POLICY

The rules and regulations stated in this policy should be applicable to ALL employees.

ALL absences will be recorded whether they are excused or unexcused.

1. EXCUSED ABSENCE—shall be classified as such when the absence is due to:

A. Bereavement (death in immediate family).
B. Military obligation.
C. Jury duty.
D. Hospital confinement.
E. Pre-arranged absence (a pre-arranged absence may be granted only when supervision can fill your assignment without using overtime or when he does not need your assignment filled).

2. UNEXCUSED ABSENCE—shall be classified as such when the reason (or reasons) is not covered by the provisions listed above.

3. UNREPORTED ABSENCE—shall be classified as an unexcused absence. An employee incurring three (3) consecutive unreported absences shall be automatically terminated.

As stated above, this policy shall be strictly enforced and corrective discipline will be administered according to the following procedures. Only unexcused absences will be used for corrective discipline purposes. Each period of absence shall be recorded as one occurrence.

Period of Absence—shall be defined as any absence covering a period of not less than one (1) day or greater than two (2) days in duration, should an employee realize his period of absence is going to exceed the two (2) day maximum, he apply for a prearranged absence, or a leave of absence providing the applicant is eligible for a leave of absence.

1. Two (2) occurrences within a consecutive twelve (12) month period: ORAL WARNING.
2. Four (4) occurrences within a consecutive twelve (12) month period: WRITTEN WARNING.
3. Six (6) occurrences within a consecutive twelve (12) month period: THREE-DAY LAYOFF.
4. Eight (8) occurrences within a consecutive twelve (12) month period: AUTOMATIC DISCHARGE.

Excessive and/or chronic absenteeism regardless of its nature cannot be tolerated. Therefore excessive and/or chronic absenteeism will result in disciplinary action.

One (1) occurrence shall be removed from an employee's record for each month of perfect attendance within the consecutive twelve (12) month period.

EFFECTIVE November 7, 1978

Stansbury admits that this policy is new except for the sections on unreported absences and on excessive and/or chronic absences.

The second page of the document contained the January absence reporting policy. According to Richardson, he asked why this page was dated January when the employees did not see it until November. Gardner did not answer. Richardson further testified that shortly after the election Respondent started having departmental meetings, which had not previously been done. The absence policy was discussed at the meetings and the employees were asked by Moccia if they had any gripes. Moccia spoke at the first meeting about the absentee policy. A number of questions were asked by employees concerning the limited number of situations classified as excused absences. Someone asked what if he had a doctor's statement and there were questions concerning bereavement and military obligation. Moccia said, "Well, it's going to stay this way right now. I don't know how long it's going to stay that way. But for now that's the way it is."

Stansbury testified that, by November, he had examined the absence policies of a number of companies. As a result he recommended to Sullivan a policy dealing with types of absences. Sullivan discussed the recommendation with Stansbury, the foremen, and other members of managment. The recommendations were accepted and it was decided to present the policy to the employees at a meeting. They also distributed a written statement of the policy along with a restatement of the absence reporting policy. According to Stansbury this latter policy was rephrased and retyped, for appearance, in the same format as the new policy; however, it was only a restatement of the policy they discussed with employees in January. To avoid any confusion regarding it being a previously existing policy. he dated it January. These two policies were also posted on the bulletin board. Later they were incorporated into an employee's handbook which was distributed in April 1979.

Stansbury also testified that for purposes of discipline an absence reported after the first break is treated the same as an unreported absence. Respondent adduced evidence to establish that, prior to the Union's organizational campaign, employees had received verbal warnings, written warnings, suspensions, and terminations for unreported absences. However, there is no such evidence as to disciplinary actions for not reporting an absence until after the first break. The record does contain evidence that Tom Boggs was given a verbal warning for the late reporting of an absence on October 3 and Noe was suspended for 3 days on September 15 for failure to report an absence on that date until about an hour after the first break.

Stansbury admits that, prior to November 7, there was no system of discipline for unexcused absences. For recurrences of the same type of misconduct, verbal warn-

ings may have been given following a written warning. Several verbal warnings may have been given prior to a written warning and several written warnings may have been given prior to a suspension.

2. Conclusions

The General Counsel contends that Boggs was suspended in retaliation for her union activities. In support thereof, the General Counsel points to the increased wearing of union buttons on the second shift which coincided with Boggs' arrival, the numerous buttons worn by Boggs on the day of her suspension, the fact that Sullivan observed and remarked upon these buttons during the meeting that day, Boggs' distribution of buttons to the assembled employees immediately before Sullivan's speech and thereafter during her break, the fact that Boggs was not given the letter of suspension until after the meeting, and the alleged disparate nature of the discipline accorded her.

Clearly, the record does not support the contention that upon her transfer to the second shift she became a leading union activist. The only evidence of any activity different in any kind from that of many other employees prior to October 20 was that she wore a union button on her first day of work on the second shift. Thereafter she did not wear a union button until October 20. Sullivan's remark regarding Boggs' display of union buttons certainly indicates that he was aware that she was wearing them and considering the small size of the employee complement[13] and the relative openness of her distribution of union buttons that evening, I also conclude that Respondent had knowledge of such activity. However, considering that Sullivan's remark about her display of union buttons was made in the context of an answer to a question as to how union dues are used and that he quickly indicated that he did not intend to disparage her display, I find that the remark was not intended as an expression of hostility toward employees wearing union buttons and could not reasonably be construed as such.

Contrary to the urgings of counsel for General Counsel and counsel for Charging Party, I find nothing particularly suspicious in the fact that Boggs was not given the letter of suspension until the latter half of her shift. The record certainly does not establish any hourly pattern for foremen handing employees disciplinary letters which had been previously prepared by Stansbury. The record does establish that some disciplinary letters were given to employees on the day following their misconduct and some were not given until several days following the misconduct.

There is no evidence in the record to establish that, in general, foremen initiate warnings and other disciplinary action for failure to report absences or even that they are involved at all in the decision to discipline in such circumstances. Records as to the reporting of absence are kept by office personnel and watchmen under the supervision of Stansbury. Stansbury initials such disciplinary actions. The foremen merely carries out his instructions. Thus, Sams' expressions of hostility as to the wearing of union buttons cannot be accorded great weight, particularly in the absence of any evidence that Respondent had otherwise attempted to interfere with the display of union buttons. It is just one of several indicia of Respondent's union animus.

If there is any evidence sufficient to establish an unlawful suspension, it must be in the area of what the General Counsel alleges to be the disparate nature of the discipline. Although Boggs denies that she was ever given a written warning in January, she admits that in January Sullivan and Stansbury told employees that if one had to be absent it was important to call in before the beginning of the shift, that prior to October 20 she was told by some supervisor that absences should be reported no later than the first break, and that she was aware that failure to do so could result in disciplinary action.

A review of Respondent's warning log and other records supports Respondent's contention that it had a problem with employees failing to call in to report absences which it aggressively began to attempt to control in January. Thus the record establishes the following number of disciplinary incidents involving an absence without notice:[14]

Year	*Month*	*Incidents*
1977	December	1
1978	January	12
1978	February	11
1978	March	7
1978	April	8
1978	May	14
1978	June	7
1978	July	2
1978	August	2
1978	September	4
1978	October	4
1978	November	4
1978	December	3
1979	January	2
1979	February	2
1979	March	0
1979	April	0
1979	May	1
1979	June	0

The disciplinary action includes 21 written warnings, 6 suspensions, and 2 discharges. The others were verbal

[13] There were approximately 40 employees on the second shift.

[14] Respondent's records do not distinguish between a complete failure to report an absence and a failure to timely report an absence. In the absence of any attempt by any party to establish the contrary from Respondent's absence log, I credit Stansbury that the two are treated as the same. In this regard, I note that Boggs and Richardson testified that they have not been disciplined for several failures to properly report an absence in 1978. However, considering that Respondent has admittedly been somewhat erratic in applying disciplinary measures for attendance problems in the past, that a difference of a few months in recollection as to the time of the occurrences could be material, that the testimony comes from only 2 employees out of an employee complement in excess of 170 and that their testimony should have been susceptible of corroboration through the absence log but no attempt was made in this regard, I find that their testimony was not sufficient to establish that, prior to the Union's organizational campaign, Respondent has not disciplined employees for failure to report absence prior to the first break.

warnings. Most of the verbal warnings were given to employees who have not since received discipline for being absent without notice. Twenty-two employees received discipline in excess of a verbal warning. Of these, 10 received a written warning after 1 verbal warning. Five received written warnings without a prior verbal warning.[15] Of the six employees who have received discipline for three or more such incidents, all except Bert Noe received written warnings for the second offense. Noe received a suspension. All except Sally McGuire and Leon Rogers received suspensions for the third offense. McGuire received a second written warning and Roberts received an oral warning. However, Rogers' third offense occurred under the more lenient policy promulgated on November 7, which provides for suspension for the sixth occurrence within a consecutive 12-month period. Furthermore, even though Noe had been put on notice at the time of his first suspension, which predates the Union's organizational campaign, he was not discharged for the third offense. Rather, he was again suspended which placed the discipline accorded him within the same pattern as that accorded the others. Yet, his third offense occurred during the Union's campaign and, on the record, his union activities at the time were more extensive than were Boggs at the time of her suspension.

In the circumstances, I conclude that the General Counsel has failed to establish that Respondent has accorded Boggs disparate treatment. I have carefully considered the argument of counsel for the General Counsel that Boggs' discipline was unusually severe inasmuch as Stansbury admitted that relative frequency of absence without notice was a factor to be considered in deciding whether to suspend or issue a written warning. However, the record does not establish what frequency is persuasive to Stansbury. He was not questioned in this regard and the incidents involving third offenses are not extensive enough to establish a pattern.[16] Nor is Respondent's treatment of Boggs so unreasonable in the circumstances as to warrant an inference of illegal motivation. In all the circumstances, I find that the evidence is insufficient to establish that Boggs was suspended in violation of Section 8(a)(1) of the Act.

G. *The Alleged Refusal To Bargain*

1. Majority

As of August 25, the date of the demand for recognition, there were 163 employees in the appropriate bargaining unit. Authorization cards of 106 of these employees were received into evidence and ruling was reserved as to the card of Billy Jackson. The validity of 71 of these authorization cards is undisputed. Respondent challenges the cards of Billy Jackson and G. W. Green as not having been properly authenticated. However, Edna Cox credibly testified that Green gave her the card after it had been filled out and signed. In these circumstances, it is immaterial that she did not actually see him sign the card. I therefore find that Green's authorization card may be counted as a valid designation of the Union as his collective-bargaining representative.

Respondent further contends that 34 other cards are not valid designations of the Union as collective-bargaining representative inasmuch as the signers were induced to sign the cards by representations that the cards were "just" or "only" to secure an election. The cards so challenged are those of Marie Kays, Edna Cardwell, Phyllis Gibson, Carrie Tillet, George Hukill, James Stewart, Jerry Rucker, Tom Boggs, Johnny Lefler, Lynn Watson, Beulah Thomas, Mark Smith, Edna Cox, Roger Curtsinger, Larry Daily, Ronnie Tabor, Neville "Sam" Weber, Lillie Sloan, Patsy Parrish, Hanson King, Don Norton, Willard Dean, Christine Harp, Jeff Henley, Debbie Hunt, Brenda Tabor, Pauline Brown, Quentin Conrad, David Johnson, Lorena Troxell, Wanda Cardwell, Betty McKinney, Ronald Thompson, and Larry Pitman.

The Board has long held that an authorization card which on its face clearly designates the Union as collective-bargaining representative may be used to establish majority status even though the employees were told that a purpose of the card was to secure a representation election. *Cumberland Shoe Corporation*, 144 NLRB 1268 (1963). *Levi Strauss & Co.*, 172 NLRB 732 (1968). This rule was approved by the Supreme Court in *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 605-609 (1979), wherein the Court held:

> In resolving the conflict among the circuits in favor of approving the Board's *Cumberland* rule, we think it sufficient to point out that employees should be bound by the clear language of what they sign unless that language is deliberately and clearly canceled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election. Elections have been, after all, and will continue to be, held in the vast majority of cases; the union will still have to have the signatures of 30% of the employees when an employer rejects a bargaining demand and insists that the union seek an election. We cannot agree with the employers here that employees as a rule are too unsophisticated to be bound by what they sign unless expressly told that their act of signing represents something else. . . .
>
> We agree, however, with the Board's own warning in *Levi Strauss & Co.*, 172 NLRB 732, 69 LRRM 1338, 1341, and fn. 7 (1968), that in hearing testimony concerning a card challenge, trial examiners should not neglect their obligation to ensure employee free choice by a too easy mechanical application of the *Cumberland* rule. We also accept the observation that employees are more likely than

[15] In three of these instances, the written warning was for a combination of absenteeism and absence without notice.

[16] One employee received a suspension within 3 weeks of a verbal warning for absenteeim. Within a 9-week period, one employee received two verbal warnings followed by a written warning, then suspension, and finally discharge. Another employee within a 5-month period received a verbal warning followed by a written warning, suspension, and finally discharge. Over a 9-month period, Bert Noe received a verbal warning followed by two suspensions 4 months apart.

not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the union, particularly where company officials have previously threatened reprisals for union activity in violation of §8(a)(1). We therefore reject any rule that requires a probe of an employee's subjective motivations as involving an endless and unreliable inquiry. We nevertheless feel that the trial examiner's findings in *General Steel* (see fn. 5, *supra*) represent the limits of the *Cumberland* rule's application. We emphasize that the Board should be careful to guard against an approach any more rigid than that in *General Steel.*

In *Levi Strauss* Respondent attempted to invalidate a number of cards on the ground that the employees, in the course of solicitation, were told that the cards would be used to get an election. The Board found that although in some instances the possibility of an election was mentioned, none of them were told either in specific terms, or in general assurances that were susceptible to such interpretation or inference, that the card was to be used only for the purpose of getting an election. Also, in further explication of its *Cumberland Shoe* doctrine, the Board stated at 172 NLRB 733–734:

> The central inquiry in determining the effect to be given authorization cards is whether the employees by their act of signing clearly manifested an intent to designate the union as their bargaining agent. The starting point, in assessing that intent, is the wording of the card. Where a card on its face clearly declares a purpose to designate the union, the card itself effectively advises the employee of that purpose. . . .
>
> Declarations to employees that authorization cards are desired to gain an election do not under ordinary circumstances constitute misrepresentations either of fact or of purpose. . . . [S]uch declarations normally constitute no more than truthful statements of a concurrent purpose for which the cards are sought. That purpose, moreover, is one that is entirely consistent with the authorization purpose expressed in the cards. . . .
>
> Thus the fact that employees are told in the course of solicitation that an election is contemplated, or that a purpose of the card is to make an election possible, provides in our view *insufficient* basis in itself for vitiating unambiguously worded authorization cards on the theory of misrepresentation. . . .
>
> [This] standard is one that comports not only with sound legal principles but also with the realities of union organizational practices. The Board's experience shows that in nearly all organizational situations unions expect to, and do, proceed via the election route in their effort to gain representation rights, and that they obtain designation cards with the thought of using them primarily to make the showing of interest required for the processing of a representation petition. It is therefore only to be expected that there will be considerable talk during an organization campaign of a contemplated representation proceeding . . . and of the purpose; indeed it would be surprising if no such mention was made. . . . We perceive no valid reason for refusing in a complaint proceeding to accord the usual probative value to unambiguous authorization cards simply because, at the time it still thought it might have a fair election, a union may have stressed the election use of the cards rather than the alternative use to which they were later put. . . . To hold that emphasis upon an election purpose during an organizational campaign is alone sufficient to impair the validity of unambiguous authorization cards when they are subsequently sought to be used in an 8(a)(5) proceeding occasioned by an employer's election interference would only allow an employer to profit from his own unfair labor practices and thereby frustrate statutory policy.

The Board made clear therein that although a finding of misrepresentation is not confined to situations where employees are expressly told in *haec verba* that the "sole" or "only" purpose of the cards is to obtain an election, it will look to substance rather than form. Thus the Board stated:

> It is not the use or nonuse of certain key or "magic" words that is controlling, but whether or not the totality of circumstances surrounding the card solicitation is such as to add up to an assurance to the card signer that his card will be used for no purpose other than to help get an election. [*Levi Strauss, supra* at fn. 7]

In *General Steel Products, Inc., and Crown Flex of North Carolina, Inc.*, 157 NLRB 636, 646–647 (1966), one of the cases reviewed by the Supreme Court in *Gissel* and the case whose Trial Examiner's findings were cited by the Court as representing the limits of the *Cumberland* rule's application, the Trial Examiner had occasion to consider the reliability of testimony that employees were told that the cards would be used "only" or "just" for an election which was adduced in response to leading questions. In that regard the Trial Examiner stated:

> There remains for consideration the cards of the six employees named in Appendix C who were told, *inter alia*, that the cards would be used only, or just, for an election. In his endeavor to establish that this was represented to be the only purpose of the cards, counsel for Respondent, on voir dire examination of a number of card signers, elicited testimony to that effect by means of leading questions. Though I am mindful that leading questions are generally permitted in the cross-examination of witnesses, I am not here persuaded that an affirmative answer so induced, by *itself* and without regard for the remainder of the record, has sufficient probative weight "to controvert the statement of the purpose and effect of [the] cards contained on the face thereof . . ." *Cumberland Shoe Corporation* . . . . In evaluating such suggested testimony, consideration must be given to the testimony of that witness *as a whole.*

> . . . [A]ppraisal of such testimony cannot ignore the varying stage of illiteracy of the witnesses involved and the degree of their sophistication or lack thereof. Though entitled to consideration, I do not deem the affirmative answer of employees given in response to such leading questions as decisive or conclusive where such answers are in conflict or irreconcilable with either the rest of the testimony of such employees and/or of credible evidence negating the testimony so adduced.

Here, as in *General Steel*, counsel elicited testimony through leading questions as to statements made by solicitors. The response of a number of witnesses to the differing manner of voicing the question underscores the essential unreliability of responses so induced where a sole word, perceived as innocuous is critical. Thus, when counsel for Respondent asked if the solicitor said the card would only be used for an election, the word "only" was unaccented and it was apparent that many of the witnesses never particularly realized that it was there or what the qualification implied. On the other hand, when counsel for the General Counsel accented the word "only," the witnesses noticed its presence.

In challenging these cards, Respondent is relying on prehearing statements it obtained from card signers in interviews with Stansbury and Jon Plinker, counsel for Respondent, that they were told by solicitors that the cards would be used only for an election. I conclude from the record as whole in this regard that these statements were generally obtained in response to leading questions and that their reliability is suspect. Illustrative of the problem is the testimony of *Curtsinger*. He signed a prehearing statement that he was told the only purpose of the card was to get an election. Yet, he testified that the solicitor asked if he wanted to sign a card to help get the Union in. As to his statement, he testified that counsel asked if he were told the purpose of the card and his response was that he was told "[t]hat if we had so many cards we could get an election. For the purpose of getting an election." When asked if he realized that was different from the wording of the statement, he said, no. Then after noticing the difference he testified that he guessed the solicitor said only or he would not have thought that the only reason for the card was to get an election. He then admitted that the solicitor said the card was for an election but he does not recall him saying an election was the only purpose. Finally, he testified that he does not recall if the solicitor said it was only for an election or if he said it was to get the Union in.

Similarly, *Kays* signed a prehearing statement that she was told the only purpose of the card was to get an election Yet, she testified that she did not mean that the solicitor told her that. Rather it was information that she had acquired sometime in the past and she does not even recall if an employee gave her the card or if she picked it up in the bathroom.

Contrary to his prehearing statement, *Norton* testified that he was told that they had to have a certain percentage of the cards signed and sent in before they could get the representative to hold an election. Then when he was asked to read from his prehearing statement, he read, "He said the purpose of the card was to get an election" completely skipping the word, "only" which precedes "purpose" in the statement. When "only" was pointed out to him, Norton testified, "that was the only reason I sign the card." When asked if the solicitor said the only purpose of the card was to get an election, he testified, "[Y]es, the only purpose was to hold an election." When asked if the solicitor used the word "only," he replied, "yes." When asked if the solicitor used the word "purpose," Norton testified, "[H]e said the purpose of the signing of the card was to hold an election, to get a representative to come down here to hold an election." Again he was asked if the solicitor said the "purpose" or "the only purpose." His reply was, "the only purpose." Then, upon examination by counsel for the General Counsel, he testified, "He said he needed the two-thirds of the people to sign a card and send it in before they could get a representative." He even conceded that the solicitor may have said that people who want the Union should sign a card.

Similar, though less pronounced, contradictions were displayed in the testimony of *Hukill, Tillett, Henley, and Troxell. Mark Smith* first testified that May told him the card was only to be used to get an election in. Finally, he admitted that it was noisy and he may not have heard precisely what May said, that "maybe he said a percentage in order to get an election in, maybe he said in order to get a union in, but in my opinion I thought he said in order to get an election in."

Beulah Thomas testified that she had no conversation with a solicitor prior to signing the card, that she picked the card up in the bathroom. When shown the sentence in her prehearing statement, "The employee told me the only purpose for the card was to get an election," she asked, "What's the difference in election and organizing a union?" She denies that she was told that the only purpose of the card was for an election or that she told Stansbury in her own words, that she was told this.

Wanda Cardwell testified that she does not recall telling Stansbury that Kettler said at a union meeting that the only purpose of the card was to get an election and she denies that Kettler made such a statement. Her only explanation for the prehearing statement is that it was not written exactly the way they talked, she read the statement in a hurry and must have overlooked it.

Edna Cardwell testified that she told Flinker that she did not actually recall what she was told by a solicitor. Rather, the language in her statement was referring to conversations she had with various employees who were not soliciting her to sign a card.

Contrary to her statement, *Gibson* testified that Kettler did not say the only purpose of the card was to get an election. Rather, that was her own idea and she signed the card in order to have an election to bring in a union. According to her, the sentence in her statement, that "Kettler said the only purpose of the cards was to get an election" means:

> You have an election to bring in a union and to be represented by the union.

> But there it was just like it was to have an election. What's the purpose of just having an election? You have the election in order to be represented by your union.

Lynn Watson testified that the solicitor simply told him the card was to get a union election and that he must have overlooked the word "only" in his prehearing statement. The statement was worded in Flinker's language and he admits Flinker may have asked him if Kettler said the only purpose of the card was to get an election, and that he may have answered affirmatively.

Willard Dean testified that, when he was given the card, there was no conversation. He signed the card and returned it to the solicitor prior to attending any union meeting. According to his statement, he received the card in the mail. Then later at a union meeting, Kettler said the only purpose of the cards was to get an election. After that meeting, several employees encouraged him to sign the card, saying it was only needed to get an election. He signed the card and turned it in at a later union meeting. Dean testified that this statement was not true, that it was in Stansbury's words, and that, even though he knew it was not true, he signed it since Stansbury told him the statement would not leave the office. According to Dean, during the interview he had to make decisions real quick. He could recall some of the things Stansbury was wanting to say so Stansbury "kind of helped me along," that is "he would say things and I would agree with him and he would write it down." Dean testified that he agreed with Stansbury even though he did not recall some things.

Ronald Tabor testified that May just handed him the card and asked if he wanted to have an election for a union. When asked if anything else was said about what the card would be used for, he answered, "He just—just to hold an election, and if I wanted the union to represent me, or something." He admits he does not recall exactly what was said. After being shown his prehearing statement that the solicitor told him the card would only be used to get an election, he again testified that the solicitor "told me it would be used for to have a union vote, and if I wanted to have it authorized, you know, the union—if I wanted the union people to represent me, or something like that. . . ." Tabor denies that May told him the only purpose for the card was to have an election. Again he testified that May gave him the card an said, "[t]hat if I wanted to sign this card to fill it out to have the union represent me and to hold an election that I would fill it out or I didn't have to fill it out. Something like that." Brenda Tabor also testified, contrary to her prehearing statement, that she was never told the only purpose of the card was to get an election. According to her, the statement she read at the conclusion of her interview with Stansbury stated that employees asked her to sign the union card to get an election and she did not understand it to say "only to get an election." She further testified that later "when she met with Flinker, he asked if she signed the card just to get an election and she told him, no, she signed it to get an election to get a union in. She also told him that the statement she had given Stansbury looked different."

Sloan testified that Cox asked her to sign the card for the election. She admits that she told Stansbury that the solicitor told her the only purpose of the card was for an election. When asked if she understood that the two statements differ, she answered, "No, I don't understand what you mean." *Harp* testified that she was told that the card was to try to get in a union, and election for a union that "if they had enough cards signed, [they] could get a union. You know, an election for a union, to get a union in." When asked if she told Stansbury that she was told the only purpose of the card was to get an election, she testified, "For a union. An election for a union. To me it's the same thing."

Daily testified that he does not know the name of the person who gave him the card, that he does not recall what was said. He only recalls that there was some mention of election. He admits that he told Flinker the person told him that the card would only be used for an election. He further testified that he knew the card was for an election.

Hunt testified that Noe told her the card was to "get in a union election." Then when shown her prehearing statement, where she said, "the card would only be used to get a union election," Hunt testified, "That's just what I told you. . . . Q. and you considered that to be the same thing that you just testified to? A. Right."

Wooldridge testified that Cox gave him a card and told him it was for the Union, if he wanted to get a union in the plant. He admits that he told Stansbury that he signed a card at a union meeting. However, he testified that he was not referring to an authorization card.[17] He further testified that he also told Stansbury that Kettler said the authorization cards would only be used for an election. However, he also testified that he does not actually recall if Kettler used the word, "only," and that Kettler further said that a union can go in without an election, if the Company will allow it. When asked why he never mentioned this latter statement to Stansbury, Wooldridge testified, "because he never said anything about it." He then testified that rather than asking him to explain in his own words what Kettler said Stansbury made a statement about the cards and the election and asked if Kettler said that.

Bixler testified that Joe Cox gave her a card, said if he could get enough cards signed they would try to get a union in, and asked her to read and sign the card if she wanted to. In her prehearing statement she said that the solicitor told her the card's only purpose was to get an election and that earlier Kettler had said the same thing at a union meeting. She testified that she told Stansbury that what she told him was true to the best of her knowledge but that he just could not remember back a year, not everything he was asking. She further testified, "[Y]ou see, I kept saying to get a union." Paul kept saying to get an election and that word kept throwing me. And I asked him what was the difference and he said, none, and so he wrote down "election," and since he said there was none I signed it. But I did not know there was a difference between to get an union and to

[17] Kettler credibly testified that some employees signed cards as employee organizers.

get an election . . . so when I signed the paper "election" to me was just like "union."

Johnson testified that Paul Harrod gave him a card and asked if he were for the Union. Johnson said he was. Harrod asked if he had signed a card. Johnson said no. Harrod asked if he wanted to sign a card. Johnson said yes. He took the card home and signed it "in order to get a union election in the plant because [he] wanted a union to represent [him]." Johnson signed a prehearing statement for Respondent on May 30, 1979, stating that this solicitor said that "the card would only be used to get an election so that we could vote on whether we wanted to be represented by the Union." On June 18, 1979, he signed a prehearing affidavit for the General Counsel wherein he stated, "He asked if I was for the Union?" I said yes. He said, "have you signed a card? I said no. I took one and signed it. He did not tell me it was only for an election." Johnson further testified that, when Flinker asked him whether he was told the card was only to get an election, he agreed because he did not think there was anything wrong in saying only an election because the way he figures you have got to have an election in order to get a union. Then he testified that Flinker asked if he were told that the only purpose of the card was to get an election and that he told Flinker that was the impression he got. Flinker made no attempt to clarify this answer.

Weber testified that Moore gave him a card and said he had some union cards to help get the Union in there to represent him for collective bargaining. He denied that Moore said the cards would only be used to get an election. He denied that he told Stansbury that Moore made such a statement and denied that such appeared in the prehearing statement he gave Stansbury. However, Respondent introduced into evidenoe a statement dated May 31, 1979, and admittedly signed by Weber which states, *inter alia*, "[h]e asked me to sign the card saying its purpose was only to get an election."

McKinney testified that she signed the card to get an election to organize a union, that she wants a union. She signed the card at a union meeting after Kettler read aloud both sides of the card and said the purpose of signing cards was to help organize a union. She denies telling Stansbury that Kettler said the only purpose of the cards was just to have an election. Yet such a statement appears in the prehearing statement she gave to Respondent. She testified that she thinks she read that statement completely prior to signing it but she admits that she is not sure because she was nervous. According to her, Stansbury asked if Kettler said the purpose of the cards were to get an election but she admits that, when Stansbury read the statement aloud, he read "only purpose." Her explanation for signing the erroneous statement is "Well, at the time I didn't realize that it was put that way and I was nervous going in his office."

Thompson testified that the signed a card at a union meeting. According to him, at the meeting Kettler spoke of the advantages of union representation, but did not mention an election. He specifically denies that he was told that the card would only be used to get an election but admits that he signed a statement dated June 1, 1979, and that he was told this both by the employee solicitor and by Kettler at the union meeting. He also testified that Stansbury asked him why he signed the card and he replied, in order to get a majority for the Union. On June 6, 1979, Johnson signed an affidavit the for the General Counsel which states, "I got the card I signed and turned it in at the union meeting at the Holiday Inn. Moore told me what the card was for. I signed the card to have the union represent me." He explained the discrepancy between the two statements: "The statement I gave to the Company, I was up in the office and they were in the office and I was confused, you know, what to expect. I was off guard and asked questions about the union and I hadn't talked to anybody about it for eight or nine months. It was just brought to my attention you know. It was fresh news."

Despite her prehearing statement to that effect, *Edna Cox* testified that, at the union meeting where she signed a card, Kettler did not say the cards would only be used to get an election. She testified that Stansbury read the statement to her before she signed it and that she read the portion she could make out but she testified that she does not recall Stansbury reading the portion which states "he told us the only purpose of the card was to get an election." Respondent challenged *Bramer's* card solely on a statement Bramer gave Respondent in which he stated that he signed a card at a union meeting at which Kettler said the cards would only be used to get an election. However, it was apparent from Bramer's testimony that the card he referred to in the statement was not an authorization card.

Patsy Parrish testified that she signed a card following a union meeting at which Kettler stated that the purpose of the card was to hold an election. There is no contention that Kettler or anyone told her that was the only purpose of the card.

It is clear from the above that in giving the statements upon which Respondent relies the employees, at best, either had no recollection of the exact words used by the solicitors or did not perceive the differing import of the inclusion of the word "only," or at worst, were untruthful witnesses. In any event, I find the statements unreliable. On the other hand, the solicitors creditably testified as to the circumstances surrounding the solicitation of the cards, none of which testimony establishes that these employees were told that the authorization cards would only be used for an election. The cards clearly and unambiguously state on the front "I ———— authorize UAW to represent me in collective bargaining" and on the reverse side states *inter alia*, that "[t]he card will be used to secure recognition and collective bargaining for the purpose of negotiating wages, hours, and working conditions."

I conclude that there is insufficient basis for vitiating such unambiguously worded authorization cards on the grounds of misrepresentation. Accordingly, I find that the authorization cards of the following employees are valid designations of the Union as collective-bargaining representative and that such cards are to be counted in establishing the Union's majority status: Marie Kays, Edna Cardwell, Phyllis Gibson, Carrie Tillet, George Hukill, Johnny Lefler, Lynn Watson, Beulah Thomas,

Mark Smith, Edna Cox, Roger Curtsinger, Larry Daily, Ronnie Tabor, Neville "Sam" Weber, Lilly Sloan, Hanson King, Don Norton, Willard Dean, Christine Harp, Jeff Henley, Debbie Hunt, Brenda Tabor, Pauline Brown, Quentin Conrad, David Johnson, Lorena Troxell, Wanda Cardwell, Betty McKinney, Ronald Thompson, and Patsy Parrish.

Certain additional considerations are raised as to the authorization cards of Billy Jackson, Larry Pitman, James Stewart, Jerry Rucker, and Tom Boggs. However, it is not necessary to reach these questions as the above establishes that as of August 25 the Union represented at least 101 of the 163 employees in the bargaining unit.

2. The propriety of a bargaining order

The complaint alleges that, by its conduct set forth above, Respondent has violated Section 8(a)(1) and (5) of the Act. I agree. It is apparent from the above that Respondent's conduct was calculated to, and did, undermine the Union's majority. The record establishes that the Union's organizational campaign began on Friday, August 11, intensified commencing with Monday, August 14, and a demand for recognition was made by letter dated August 25. The Union's first campaign distribution of literature was on August 30. Beginning on that day and for the next 2 days, Respondent's third-in-command and part owner, Moccia, had individual interviews with five of the Union's most active adherents during which he announced an unlawful no-solicitation, no-distribution rule and warned them that violation of such rule would result in disciplinary action. Thereafter, these interviews were noted in Respondent's warning log as verbal warnings.

On September 5, Respondent promulgated and thereafter enforced an unlawful rule prohibiting distributions on Respondent premises without prior permission. On September 11, Respondent's president, Sullivan, announced to employees that it was withholding their annual wage increase scheduled for September 17 because the Union had filed a representation petition. Respondent did withhold the wage increase until November 7, 10 days after it won the election.

On September 12, it engaged in unlawful surveillance of its employees' distribution of union literature and at the same time, through its Personnel Manager Stansbury, interfered with such distribution during nonworktime in nonwork areas in a manner visible to most employees. Other unlawful interference with the distribution of union literature, through Moccia and Stansbury, occurred on October 11 and 23. Also in October, Foreman Sams threatened employees with disciplinary action for the possession of union literature and the wearing of union buttons.

Concurrently, in September and October, Sullivan gave speeches to the assembled employees during which he made not-so-subtle threats of plant closure and loss of profit sharing and other benefits, including lower wage increases than they might otherwise expect if they selected the Union as their collective-bargaining representative. Further he impressed upon them the futility of selecting the Union as their collective-bargaining representative and conveyed to them the impression that unions inevitably bring uncompetiveness, strikes, loss of jobs, and eventually plant closure.

Such conduct directly inhibits activity in support of the Union and the threat of plant closure, loss of bonuses, and failure to secure the most favorable possible wage increase strikes at the very heart of the reasons that employees are most apt to seek union representation—job security and economic benefit. Furthermore, Respondent, by withholding the wage increase, made clear that it could and would enforce its threats that union representation would result in economic loss to employees. Such conduct is likely to have had a significant impact on the employees' freedom of choice rendering the election an inaccurate register of employee desire as to union representation. Further, this conduct has had effects which cannot be expunged through traditional Board remedies. I therefore conclude that Respondent's conduct has undermined the Union's majority and rendered doubtful or impossible the holding of a free and fair second election. *N.L.R.B* v. *Gissel Packing Co., supra; Willow Mfg. Corp., supra.*

In these circumstances, I find that Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as the majority representative of its employees while coterminously engaging in conduct which undermined the Union's majority status and prevented the holding of a fair election. *Trading Post, Inc.*, 219 NLRB 298 (1975).

H. *Respondent's Postelection, Prehearing Conduct*

1. The alleged obstruction of the Board processes and creation of an impression of surveillance

On May 31, 1979, the General Counsel served subpenas in this matter on certain employees of Respondent. The accompanying letter signed by counsel for the General Counsel states, *inter alia*:

> Enclosed is a *subpoena ad testificandum* which compels your presence at the unfair labor practice hearing in the above-captioned cases on the 19th day of June 1979, at 10 o'clock (EDST) at the Circuit Courtroom, Second Floor, Franklin County Courthouse, Frankfort, Kentucky. The sole reason why Counsel for the General Counsel is subpoening you is to have you to testify that you did, in fact, sign a UAW authorization card on the dated [sic] indicated thereon.
>
> * * * * *
>
> In this regard, you will be contacted in the near future concerning a time and place whereby we can meet with you to discuss the details of your testimony and what you can expect to happen at trial. This procedure will not take more than five or ten minutes per person.

On June 1, 1979, a letter signed by Union Representative Gus Kettler was sent by the Union to employees who had signed union authorization cards, the body of which reads:

DEAR UAW CARD SIGNER:

As you know, a hearing is coming up June 19 on the Union's objections to the election held last fall and the unfair labor practice charges against the company. In fact, you may have already received a subpoena from the Labor Board in connection with this.

To assist in preparing for this hearing, please come to the Holiday Inn any time after 4:00 p.m., *Wednesday* (June 6) or on *Thursday* (June 7). At those times, I and the lawyers who will be putting on our case can help explain to you how the hearing will be conducted.

If you have any questions in the meantime, give me a call.

Moccia testified that two employees showed him the two letters. One of them asked if he had to go to the Holiday Inn as requested in Kettler's letter. Foremen Gardner, Rucker, and Sams also told Moccia that employees had been questioning them regarding these letters. Rucker said that basically he was being asked two questions—did they have to go to the Holliday Inn on June 6 and 7 and, if they did, would they still be required to appear at the June 19 hearing. Moccia said he was confused by the two letters, and that from a reading of the May 31 letter he assumed that the employees would be contacted by counsel for the General Counsel, not by the Union. Further the Kettler letter did not mention the National Labor Relations Board. Accordingly, he requested that Stansbury find out what answer he should give employees.

Stansbury testified that two or three employees had also asked him similar questions. He told them he would have to examine the situation with Sullivan and Moccia and get back to them. After his conversation with Moccia, he telephoned Respondent's attorney, told him about the letter which accompanied the subpenas, and read him the Kettler letter. They discussed whether the Kettler letter was the contact referred to in the letter accompanying the subpenas but Stansbury did not testify specifically as to what was said in this regard. Stansbury asked if it would be proper to answer the inquiries and they then discussed what should be said. Again, Stansbury did not testify as to specifics. Thereafter Stansbury suggested that Moccia answer the questions at a meeting of employees. Moccia said that sounded better than getting back to the individual questioners. Stansbury gave Moccia a statement which he and Flinker had prepared during the course of their telephone conversation.

According to Stansbury, he told Moccia, "I think in order that we don't do anything out of the ordinary or anything that would create problems stick exactly to what you have on your paper." I said, "Don't go off and try to wing it." I said, "Just whatever you've got prepared stick with that." Moccia testified that he called a meeting of all employees on June 6, 1979. According to him, he read the following statement verbatim and then asked for questions but there were none:

A lot of you have asked questions about the subpoenas you have received and the union meeting scheduled for this afternoon and tomorrow.

You have an absolute right to attend those meetings and you have an absolute right *not* to attend those meetings.

We cannot tell you what to do.

If you feel you want to help the Union prosecute your Company, then you are free to attend; but, if you do not want to help the union prosecute your Company then you have an absolute right to stay home.

My lawyer tells me that the subpoenas only apply to the hearing to be held on the 19th of June, 1979. They do not apply to and they do not require you to attend union meetings.

When asked why he chose to address the assembled employees rather than have the foremen answer questions as they arose, Moccia testified that whenever there is an issue which involves more than two or three individuals, it is Respondent's policy to have a general meeting covering the situation.

The General Counsel contends that Moccia's speech was knowingly and deliberately calculated to discourage employees from meeting with counsels for the General Counsel and that Moccia's statement that he knew that the June 6 meeting was scheduled unlawfully created the impression of surveillance of their union activities. I find no merit in these contentions. Moccia did not tell employees that they did not have to cooperate with the Board. The Kettler letter did not mention the Board and a reading of both the letter from counsel for the General Counsel and the Kettler letter does not require a conclusion that Kettler's letter is the communication referred to by counsels for the General Counsel. As to the surveillance contention, Moccia's statement made clear that he had learned of the meeting from employees who questioned him as to their obligations to attend the meeting. In these circumstances, employees could not reasonably assume that Respondent had their union activities under surveillance. Accordingly, I find that Respondent did not violate Section 8(a)(1) of the Act by Moccia's speech.

I. *The Prehearing Interrogations*

Several weeks prior to the opening of the hearing herein Respondent called a number of employees individually into the office of Personnel Manager Paul Stansbury where they were interviewed by either Stansbury or Respondent's counsel, Jon Flinker. The Stansbury interviews were conducted in the presence of Moccia or some other management official and the Flinker interviews were conducted in the presence of Stansbury. The interviews were ostensibly conducted for the purpose of obtaining information for the preparation of its defense as to the Union's majority status. The General Counsel contends that these interrogations were coercive in violation of Section 8(a)(1) of the Act.

The Board has long held that an employer may lawfully interrogate employees on matters involving their Section 7 rights where such interrogation is pertinent to the

investigation of facts concerning issues raised in an unfair labor practice complaint and the employer's preparation of a defense thereto. However, to avoid incurring 8(a)(1) liability, the employer must follow specific safeguards designed by the Board to minimize the coercive impact of such interrogation. These safeguards, as set forth in *Johnnie's Poultry Co.*, 146 NLRB 770, 775 (1964), are:

> [T]he employer must communicate to the employee the purpose of the questioning, assure him that no reprisal will take place, and obtain his participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information conerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees. When an employer transgresses the boundaries of these safeguards, he loses the benefits of the privilege.

It is undisputed that with one exception,[18] Stansbury and Flinker immediately assured each employee that participation in the interview was voluntary. It is also undisputed that, at the conclusion of the interview, each employee was asked to sign a statement written by one of the management officials present purporting to be an account of the information elicited from the employee. At that time each of the employees was also given the following prepared statement which they were asked to read, date, and sign:

NOTICE

> Southern Moldings, Inc. would appreciate if you would cooperate with our attorney in his investigation of the unfair labor practice charges filed against the Company by the UAW. The investigation is being conducted solely in connection with the forthcoming National Labor Relations Board hearing concerning these charges.
>
> Your participation or lack of participation in this investigation will in no way affect your job or your rights as an employee. Nor will it affect your re-employment with the Company if you are not presently employed by the Company. You have the right to refuse to participate without affecting your job, your re-employment or your rights as an employee. We are not interested in ascertaining whether you are for or against any union. This is your own business. We are interested only in the truth.
>
> I have read the above and understand it.

Employees David Johnson, Neville Weber, Wanda Cardwell, Charles Bramer, Edna Cox, and Debbie Hunt credibly testified that prior to the commencement of the interrogation they were not given assurances against reprisals. Brenda Tabor credibly testified that she was not told that the interview was voluntary until after she was asked several questions. Stansbury asked if she signed a union card. Upon her affirmative reply he asked where she obtained the card. She said that she would rather not answer. He asked to whom she returned the card. Again she answered that she would rather not say because she did not want to get anyone in trouble. It was only then that he told her she could leave if she wished. Bramer and Weber testified that they were not told the purpose of the interrogation.

The General Counsel also contends that Respondent failed to limit its interrogation to those questions necessary to Respondent's defense. Stansbury admits that he asked each employee whether they attended union meetings and asked them to identify other employees who attended union meetings. He further admits that his asking them to identify persons attending union meetings was not for the purpose of investigating the circumstances surrounding the signing of the cards. Bramer credibly testified that Stansbury asked him who was present at union meetings. When Bramer said he did not recall with certainty, Stansbury opened a folder, read off some names, and asked if those persons were present. As Stansbury asked these questions, he was writing something. I conclude, therefore, that the questioning did exceed that which was necessary to Respondent's defense.

In view of the above, I conclude that these interviews were conducted without observing all of the safeguards established by the Board and were conducted in a context of unremedied unfair labor practices whose lingering effects I have heretofore noted. Accordingly, I find that Respondent thereby violated Section 8(a)(1) of the Act. *Johnnie's Poultry Co., supra; Tamper, Inc.*, 207 NLRB 907 (1973); *Roadway Express, Inc.*, 239 NLRB 653 (1978).

IV. THE OBJECTIONS

The objections involved herein alleged in substance:

> 2. The Employer promised benefits, including wage increases, to employees in order to induce them to vote against the Petitioner.
>
> 3. The Employer threatened to discontinue benefits if the Petitioner won the election.
>
> 4. The Employer threatened dire economic consequences, including plant closure, if the Petitioner won the election and predicted a loss of business to the Employer if the Petitioner won the election.
>
> 5. The Employer interrogated employees concerning their protected concerted activities.
>
> 6. The Employer created the impression of surveillance of employees' union activities.
>
> 9. The Employer, through literature and speeches, informed the employees that collective bargaining was futile and inevitably leads to strikes.
>
> 10. The Employer prohibited distribution of literature in order to discourage support for the Petitioner.
>
> 11. The Employer denied all employees their annual wage increase in order to discourage support for the Petitioner.
>
> 12. The Employer discriminated in regard to terms and conditions of employment of Nellie

[18] Brenda Tabor.

Boggs by suspending her on or about October 19, 1978.

As discussed above, I have found that Respondent did not violate the Act by promising employees benefits in order to induce them to vote against the Union or by suspending Boggs. Accordingly, I recommend that Objections 2 and 12 be overruled.

I have found above that Respondent during the critical period herein has violated Section 8(a)(1) of the Act by the conduct alleged in Objections 3, 4, 5, 6, 9, 10, and 11, and that such conduct also interfered with the employees' exercise of a free and untrammeled choice in the election held on October 27, 1978. Accordingly, I recommend that Objections 3, 4, 5, 6, 9, 10, and 11 be sustained and that the said election be set aside and the petition in Case 9-RC-12608 be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section (5) of the Act.

3. On August 25, 1978, the Union was designated as the majority representative for purposes of collective bargaining of Respondent's employees in the unit described as follows:

> All production and maintenance employees, including shipping and receiving employees, janitors, inspectors, tool room employees, first aid attendant, employed by [Respondent] at its plant in Frankfort, Kentucky; but excluding all office clerical employees and all guards, professional employees and supervisors, as defined in the Act.

The aforesaid unit is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Commencing on or about August 25, 1978, the Union has requested, and is requesting, Respondent to bargain collectively with it as the exclusive bargaining representative of the employees in the unit described above with respect to wages, hours, and other terms and conditions of employment.

5. By refusing to recognize and bargain with the Union as the majority representative of its employees while coterminously engaging in conduct which undermined the Union's majority status and prevented the holding of a fair election, Respondent has violated Section 8(a)(1) and (5) of the Act.

6. Respondent has interfered with, restrained, and coerced employees in violation of Section 8(a)(1) of the Act by announcing to employees a rule prohibiting solicitation and distribution on company property and reprimanding and threatening to reprimand them for violations thereof; by promulgating no-solicitation, no-distribution rules in order to discourage employees from engaging in union activities; by promulgating and enforcing a no-distribution rule which prohibits employees from distributing literature in nonwork areas during nonwork-time; by threatening employees with disciplinary action for wearing union buttons and distributing and receiving union literature; by coercively interrogating employees as to their union sympathies and activities; by withholding and telling employees it is withholding a scheduled annual wage increase because the Union filed a representation petition; by announcing to employees the futility of selecting the Union as their collective-bargaining representative and conveying to them the impression that union representation inevitably brings uncompetiveness, strikes, loss of jobs, lower wage increases and other dire consequences, and eventually plant closure; and by threatening employees with plant closure and loss of profit-sharing bonuses and other benefits if they select the Union as their collective-bargaining representative.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. Respondent has not engaged in the other unfair labor practices alleged in the consolidated complaint herein.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices in violation of Section 8(a)(1) and (5) of the Act, I shall recommend that Respondent cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law and the entire record in this proceeding and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby recommend the following:

ORDER[19]

The Respondent, Southern Moldings, Inc., Frankfort, Kentucky, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive representative of its employees in the unit set forth below.

(b) Coercively interrogating its employees regarding their union activities and sympathies and the union activities and sympathies of fellow employees.

(c) Withholding, or telling its employees it is withholding, scheduled annual wage increases because the Union filed a representation petition.

(d) Threatening employees with plant closure and loss of profit-sharing bonuses and other benefits if they select the Union as their collective-bargaining representative.

(e) Announcing to employees the futility of selecting the Union as their collective-bargaining representative and conveying to them the impression that union representation inevitably brings uncompetiveness, strikes, loss

[19] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

of jobs, lower wage increases, plant closure, and other dire consequences.

(f) Announcing to employees a rule prohibiting solicitation and distribution on company property and reprimanding, and threatening to reprimand, them for violations thereof.

(g) Threatening employees with disciplinary action if they wear union buttons or distribute, and or receive, union literature.

(h) Promulgating no-solicitation, no-distribution rules in order to discourage employees from engaging in union activities.

(i) Promulgating and enforcing a no-distribution rule which prohibits employes from distributing in nonwork areas during nonworktime.

(j) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in the Act.[20]

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Upon request, recognize and bargain collectively with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, as the exclusive representative of the employees in the following appropriate unit, and upon request, embody in a signed agreement any understanding reached:

> All production and maintenance employees, including shipping and receiving employees, janitors, inspectors, tool room employees, first aid attendant, employed by [Respondent] at its plant in Frankfort, Kentucky; but excluding all office clerical employees and all guards, professional employees and supervisors, as defined in the Act.

(b) Expunge from its records all memorandum of, or reference to, the verbal warning given Quenton Conrad, Bert Noe, Joe Cox, and Edna Cox for violation of its invalid no-solicitation, no-distribution rule.

(c) Post at its place of business in Frankfort, Kentucky, copies of the attached notice marked "Appendix."[21] Copies of said notice on forms provided by the Regional Director for Region 9, after being duly signed by the Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that all allegations of the complaint which have not been sustained be dismissed.

[20] I find that Respondent's conduct is so egregious and widespread as to warrant a broad order. *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979); *Pedro's Inc., d/b/a Pedro's Restaurant*, 246 NLRB 567 (1979).

[21] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."